

**SUPPLEMENT TO OFFICIAL STATEMENT**  
**Dated April 24, 2006**

**Relating to**

**\$12,305,000**

**ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS**  
**REVENUE BONDS**  
**(OUR LADY OF FATIMA VILLA), SERIES 2006**

The material under the caption “Underwriting” in the Official Statement, dated April 24, 2006, relating to the Bonds identified above is hereby revised to read as follows:

Cain Brothers & Company, LLC (the “Underwriter”), will purchase the Bonds pursuant to a purchase contract (the “Purchase Contract”) to be entered into with the Authority and the Borrower. Pursuant to the Purchase Contract, the Underwriter will receive an underwriting fee of \$138,431.25. The Purchase Contract provides that the Underwriter will purchase all of the Bonds, if any are purchased, and contains the agreements of the Borrower to indemnify the Underwriter and the Authority against certain liabilities.

Dated: May 2, 2006

ABAG Finance Authority  
for Nonprofit Corporations

*In the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to the Authority, based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. In the further opinion of Bond Counsel, interest on the Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although Bond Counsel observes that such interest is included in adjusted current earnings when calculating corporate alternative minimum taxable income. Bond Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the accrual or receipt of interest on, the Bonds. See "TAX MATTERS."*



**\$12,305,000**  
**ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS**  
**REVENUE BONDS**  
**(OUR LADY OF FATIMA VILLA), SERIES 2006**

Dated: Issue Date

Price: 100%

Due: May 15, 2036

The Bonds are being issued pursuant to an Indenture, dated as of May 1, 2006 (the "Indenture"), between the ABAG Finance Authority for Nonprofit Corporations (the "Authority") and Wells Fargo Bank, National Association, as trustee (the "Trustee"), for the benefit of Our Lady of Fatima Villa, Inc. (the "Borrower"). The Authority will loan the proceeds of the Bonds to the Borrower pursuant to a Loan Agreement, dated as of May 1, 2006 (the "Loan Agreement"), between the Authority and the Borrower to: (i) finance and refinance the costs of the improvement and equipping of an assisted living and skilled nursing facility owned and operated by the Borrower and (ii) pay certain costs of issuance of the Bonds, all as more fully described herein. The Bonds are payable by the Trustee from the Revenues pledged under the Indenture as described herein, which generally consist of loan repayments required to be made by the Borrower under the Loan Agreement.

The Bonds will be issued as fully-registered bonds, registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"), which will act as securities depository for the Bonds. Purchases and tenders of the Bonds may be made in book-entry form only, through brokers and dealers who are, or who act through, DTC Participants (as herein defined). Beneficial owners of the Bonds will not receive physical delivery of bond certificates. Payments of the principal and purchase price of, premium, if any, and interest on the Bonds will be made to DTC. Disbursement of payments to DTC Participants is the responsibility of DTC and disbursement of payments to the beneficial owners is the responsibility of DTC Participants. See APPENDIX B - "BOOK-ENTRY SYSTEM."

The Bonds will initially bear interest at a Variable Rate and while in a Variable Rate Period will be available in denominations of \$100,000 and any integral multiple of \$5,000 in excess thereof. During a Variable Rate Period, interest is payable on the first Business Day of each month, commencing June 1, 2006. The Bonds may be converted to bear interest at a Fixed Rate as described herein.

**This Official Statement describes certain terms of the Bonds applicable while such Bonds accrue interest at a Variable Rate. This Official Statement is not intended to provide information with respect to the Bonds if the Bonds are converted to bear interest at a Fixed Rate.**

The Bonds are subject to optional and mandatory tender for purchase and optional and mandatory redemption prior to maturity as described herein.

Payment of the principal of, interest on, and purchase price of the Bonds bearing interest at a Variable Rate pursuant to the Indenture is supported initially by an irrevocable direct-pay letter of credit (the "Letter of Credit"), being issued concurrently with the issuance of the Bonds by

**KBC Bank N.V., acting through its New York Branch**



(the "Bank"). The Letter of Credit will expire on May 1, 2009 (the "Stated Expiration Date"), unless extended or terminated prior thereto as described herein.

THE BONDS ARE LIMITED OBLIGATIONS OF THE AUTHORITY AND THE PRINCIPAL THEREOF, AND PREMIUM, IF ANY, AND INTEREST THEREON, ARE PAYABLE SOLELY FROM, AND SECURED IN ACCORDANCE WITH THEIR TERMS AND THE PROVISIONS OF THE INDENTURE SOLELY BY, THE REVENUES AND THE OTHER AMOUNTS PLEDGED THEREFOR THEREUNDER. THE PURCHASE PRICE OF THE BONDS IS PAYABLE SOLELY FROM, AND SECURED IN ACCORDANCE WITH THEIR TERMS AND THE PROVISIONS OF THE INDENTURE SOLELY BY, THE PROCEEDS OF THE REMARKETING OF THE BONDS, AMOUNTS MADE AVAILABLE UNDER THE LETTER OF CREDIT OR ANY ALTERNATE LETTER OF CREDIT AND AMOUNTS PROVIDED BY THE BORROWER PURSUANT TO THE LOAN AGREEMENT. NEITHER THE AUTHORITY, THE ASSOCIATION OF BAY AREA GOVERNMENTS ("ABAG"), ANY OF THE MEMBERS OF THE AUTHORITY OR ABAG, THE STATE OF CALIFORNIA (THE "STATE"), NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE AUTHORITY, TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) WILL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER, AND NONE OF THE BONDS OR ANY OF THE AUTHORITY'S AGREEMENTS OR OBLIGATIONS WILL BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF OR A PLEDGE OF THE FAITH AND CREDIT OF OR A LOAN OF THE CREDIT OF THE AUTHORITY, ABAG, OR THE MEMBERS OF THE AUTHORITY OR ABAG, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE AUTHORITY, TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER. NEITHER THE AUTHORITY NOR ABAG HAS ANY TAXING POWER.

***Because the Bonds are secured by the Letter of Credit, this Official Statement does not contain information relating to the Borrower or its ability to pay principal of and interest on the Bonds. The investment decision to purchase the Bonds should be made solely on the basis of the creditworthiness of the Bank, which is issuing the Letter of Credit from which all principal of and interest on the Bonds will be paid.***

This cover page contains certain information for ease of reference only. Potential investors are advised to read this entire Official Statement, including the Appendices, to obtain information essential to making an informed investment decision.

The Bonds are offered when, as and if received by the Underwriter, subject to prior sale and to the approval of validity by Orrick, Herrington & Sutcliffe LLP, Bond Counsel to the Authority. Certain legal matters will be passed upon for the Borrower by its counsel, Diepenbrock Harrison, A Professional Corporation, Sacramento, California, for the Authority by Jones Hall, A Professional Law Corporation, San Francisco, California, and for the Bank by its counsel, Chapman and Cutler LLP, Chicago, Illinois. It is expected that the Bonds in definitive form will be available for delivery to the Underwriter via DTC on or about May 2, 2006.

**CAIN BROTHERS**

This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy the Bonds, nor shall there be any sale of the Bonds by any person in any state or other jurisdiction to any person to whom it is unlawful to make such offer, solicitation or sale in such state or jurisdiction. No dealer, broker, salesperson, or any other person has been authorized to give any information or to make any representation other than those contained herein in connection with the offering of the Bonds and, if given or made, such information or representation must not be relied upon.

The information set forth herein under the caption “THE AUTHORITY” and “ABSENCE OF MATERIAL LITIGATION–The Authority” has been obtained from the Authority; the information set forth herein under the caption “THE BANK, THE LETTER OF CREDIT AND THE REIMBURSEMENT AGREEMENT” has been furnished by the Bank; and the information set forth in APPENDIX B– “BOOK-ENTRY SYSTEM” has been furnished by The Depository Trust Company. All other information set forth herein has been obtained from the Borrower and other sources that are believed to be reliable, but such other information is not guaranteed as to accuracy or completeness and is not to be construed as a representation by the Authority.

The Underwriter has provided the following sentence for inclusion in this Official Statement. The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibility to investors under the federal securities law as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

The information and expressions of opinion herein are subject to change without notice and neither the delivery of this Official Statement nor any sale of the Bonds made hereunder shall, under any circumstances, create any indication that there has been no change in the affairs of the Authority, the Bank, the Borrower or DTC since the date hereof. This Official Statement, including any supplement or amendment hereto, is intended to be deposited with one or more repositories.

IN CONNECTION WITH THE OFFERING OF THE BONDS, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE BONDS OFFERED HEREBY AT LEVELS ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

THE BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE INDENTURE HAS NOT BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, AS AMENDED, IN RELIANCE UPON EXEMPTIONS CONTAINED IN SUCH ACTS. THE REGISTRATION OR QUALIFICATION OF THE BONDS IN ACCORDANCE WITH APPLICABLE PROVISIONS OF LAWS OF THE STATES IN WHICH BONDS HAVE BEEN REGISTERED OR QUALIFIED AND THE EXEMPTION FROM REGISTRATION OR QUALIFICATION IN OTHER STATES CANNOT BE REGARDED AS A RECOMMENDATION THEREOF. NEITHER THESE STATES NOR ANY OF THEIR AGENCIES HAVE PASSED UPON THE MERITS OF THE BONDS OR THE ACCURACY OR COMPLETENESS OF THIS OFFICIAL STATEMENT. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.

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**OFFICIAL STATEMENT**  
**\$12,305,000**  
**ABAG Finance Authority for Nonprofit Corporations**  
**Revenue Bonds**  
**(Our Lady of Fatima Villa),**  
**Series 2006**

**INTRODUCTORY STATEMENT**

The following introductory statement is subject in all respects to the more complete information set forth elsewhere in this Official Statement. The descriptions and summaries of various documents hereinafter set forth do not purport to be comprehensive or definitive, and are qualified in their entirety by reference to such documents. All capitalized terms used in this Official Statement and not otherwise defined herein have the meanings assigned to such terms in APPENDIX A - "DEFINITIONS AND SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL DOCUMENTS – Definitions of Certain Terms" or, if not defined therein, in the Indenture or in the Reimbursement Agreement, each as hereinafter defined.

**General**

This Official Statement, including the cover page and Appendices hereto (the "Official Statement"), is provided to furnish information with respect to the sale and delivery of \$12,305,000 aggregate principal amount of ABAG Finance Authority for Nonprofit Corporations Revenue Bonds (Our Lady of Fatima Villa), Series 2006 (the "Bonds"), which are being issued by the ABAG Finance Authority for Nonprofit Corporations (the "Authority") for the benefit of Our Lady of Fatima Villa, Inc., a California nonprofit public benefit corporation (the "Borrower"), pursuant to an Indenture, dated as of May 1, 2006 (the "Indenture"), between the Authority and Wells Fargo Bank, National Association, as trustee (the "Trustee"). Wells Fargo Bank, National Association is also acting as tender agent for the Bonds (the "Tender Agent"). The proceeds of the Bonds will be loaned to the Borrower by the Authority pursuant to a Loan Agreement, dated as of May 1, 2006 (the "Loan Agreement"), between the Authority and the Borrower.

**Application of Proceeds**

The proceeds of the Bonds will be applied (i) to finance and refinance the costs of the improvement and equipping of an assisted living and skilled nursing facility owned and operated by the Borrower and (ii) to pay certain costs of issuance of the Bonds. See "THE BORROWER" and "THE PROJECT" herein.

**The Initial Letter of Credit**

The Bonds will be issued as variable rate bonds initially bearing interest at a Variable Rate. While the Bonds are in a Variable Rate Period, payment of the principal of, Purchase Price of, and interest on the Bonds will be supported initially by an irrevocable, direct-pay letter of credit (the "Initial Letter of Credit") being issued by KBC Bank N.V., acting through its New York Branch (the "Bank") pursuant to and subject to the terms of a Reimbursement Agreement, dated as of May 1, 2006 (the "Reimbursement Agreement"), between the Borrower and the Bank. The Initial Letter of Credit will permit the Trustee, in accordance with the terms thereof, to draw an amount sufficient to pay (a) the principal amount of, or the portion of the Purchase Price constituting principal of, the Bonds, plus (b) the interest on, or the portion of the Purchase Price constituting interest on, the Bonds up to 45 days' interest at a maximum annual interest rate of 10% based on a 365-day year for the actual number of days elapsed. The Letter of Credit will expire on May 1, 2009, unless extended or earlier terminated pursuant to its provisions as more fully described herein and may, under certain circumstances, be replaced by an Alternate Letter of Credit. See "SECURITY AND SOURCE OF PAYMENT FOR THE BONDS – The Letter of Credit" and "Alternate Letter of Credit" and "THE BANK, THE LETTER OF CREDIT AND THE REIMBURSEMENT AGREEMENT – The Letter of Credit."

So long as a Letter of Credit is in effect, the Bank providing such Letter of Credit shall control the exercise of the rights and remedies of the Holders of the Bonds upon the occurrence of an event of a default. See “THE BANK, THE LETTER OF CREDIT AND THE REIMBURSEMENT AGREEMENT – The Reimbursement Agreement.”

### Investment Considerations

*As indicated above, payment of the principal of, Purchase Price of and interest on the Bonds will be supported by the Letter of Credit. An investment decision to purchase the Bonds should be made solely on the basis of the creditworthiness of the Bank. This Official Statement does not contain any financial or operating information relating to the Borrower or its ability to make payments sufficient to pay the principal of, Purchase Price of or interest on the Bonds and prospective investors should not expect that the Borrower would be able to make payments sufficient to pay the principal of, Purchase Price of or interest on the Bonds.*

## THE BONDS

### Terms of the Bonds

**General.** The Bonds will be issued and delivered in the aggregate principal amount set forth on the cover page of this Official Statement, will be dated their date of initial delivery (the “Issue Date”), will mature on May 15, 2036 and will be issued in fully registered form in denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof. The Bonds will bear interest from and including the Issue Date thereof to but excluding the date of payment in full thereof (whether at maturity, upon redemption or acceleration or otherwise) and will initially bear interest at a Variable Rate. While the Bonds bear interest at a Variable Rate, interest will be calculated on the basis of a 365- or 366-day year, as applicable, for the number of days actually elapsed.

The Bonds will be transferable and exchangeable as set forth in the Indenture and, when delivered, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”), which will act as securities depository for the Bonds. See APPENDIX B - “BOOK-ENTRY SYSTEM.” So long as Cede & Co. is the registered owner of the Bonds, principal and Purchase Price of, premium, if any, and interest on, the Bonds shall be payable by wire transfer to Cede & Co., as nominee for DTC, which, in turn, will remit such amounts to the DTC Participants (as such term is defined in APPENDIX B hereto) for subsequent disbursement to the Beneficial Owners (as such term is defined in Appendix B hereto). In addition, so long as Cede & Co. is the registered owner of the Bonds, the right of any Beneficial Owner to exercise its right to tender its interest in any Bond for purchase and receive payment therefor will be based only upon and subject to the procedures and limitations of the book-entry only system described in APPENDIX B - “BOOK-ENTRY SYSTEM.”

**Determination of Interest Rate on Bonds.** Interest on the Bonds will initially be calculated based on a Variable Rate. The Variable Rate shall be determined from time to time as provided in the Indenture; provided, that no Bond (other than a Pledged Bond which shall bear interest as provided in the applicable Reimbursement Agreement) shall bear interest at a rate exceeding the Maximum Rate. **This Official Statement describes certain terms of the Bonds applicable while such Bonds accrue interest at a Variable Rate. This Official Statement is not intended to provide information with respect to the Bonds if the Bonds are converted to bear interest at the Fixed Rate.**

The interest rate on the Bonds for each Variable Rate Period shall be determined by the remarketing agent appointed by the Borrower pursuant to the provisions of the Indenture. The Borrower has appointed Cain Brothers & Company, LLC to serve as the initial remarketing agent (together with any successor thereto, the “Remarketing Agent”) for the Bonds and will enter into a Remarketing Agreement, dated as of May 1, 2006, with Cain Brothers & Company, LLC. During the Variable Rate Period, the Variable Rate shall be determined on the basis of a 365/366-day year, actual number of days elapsed, by the Remarketing Agent, by 4:30 p.m. New York City time on each Wednesday (or the immediately preceding Business Day if such Wednesday is not a Business Day) and shall be the minimum rate necessary (as determined by the Remarketing Agent based on the examination of tax-exempt obligations comparable to the Bonds known to the Remarketing Agent to have been priced or traded under then-prevailing market conditions) for the Remarketing Agent to sell the Bonds on the effective date of such Variable Rate at their principal amount (without regard to accrued interest). The first Variable Rate shall apply to the period

beginning on the Issue Date and ending on the next Wednesday. Thereafter, each Variable Rate shall apply to the period beginning on the Thursday of the week in which such Variable Rate is set and ending on the following Wednesday, or if earlier, ending on the Conversion Date. Notwithstanding the foregoing, the Variable Rate shall not exceed the lesser of 10% per annum or the maximum rate permitted by applicable law (the "Maximum Rate"). If no Remarketing Agent is serving under the Indenture, or if for any reason the Remarketing Agent has not determined the Variable Rate on a Wednesday (or the immediately preceding Business Day if such Wednesday is not a Business Day), the Variable Rate shall be determined as follows: (i) for the first weekly period following the failure to set a Variable Rate, the Variable Rate shall be the same rate as the preceding weekly period, and (ii) thereafter the Variable Rate shall be equal to one hundred twenty percent (120%) of the most recent BMA Municipal Swap Index and such Variable Rate shall be communicated to the Trustee by or on behalf of the Borrower. The Trustee shall promptly notify the Bondholders, the Borrower and the Authority by first-class mail of any change in the interest rate determination method as described in the preceding sentence.

"BMA Municipal Swap Index" means the Bond Market Association Municipal Swap Index as of the most recent date for which such index was published or such other weekly, high-grade index comprised of seven-day, tax-exempt variable rate demand bonds produced by Municipal Market Data, Inc. or its successor, or otherwise designated by the Bond Market Association or if not available, such other comparable index selected by the Borrower with the written consent of the Remarketing Agent.

"Business Day" means any day other than (i) a Saturday, (ii) a Sunday, (iii) a day on which banking institutions in the city in which the Corporate trust office of the Trustee or the Tender Agent is located or the principal office of the Remarketing Agent is located or the office of the Bank at which drawing documents are required to be presented to realize moneys under the Letter of Credit are required or authorized by law or executive order to be closed, or (iv) a day on which the New York Stock Exchange is closed.

***Special Rate Resetting.*** If any Bonds constitute Pledged Bonds or Borrower Bonds due to a failure in remarketing such Bonds on a mandatory tender date, the Remarketing Agent shall be entitled to determine a new Variable Rate with respect to such Bonds, as appropriate (under the conditions and subject to the limitations provided in the Indenture), effective on such date as the Remarketing Agent is able to remarket such Pledged Bonds or Borrower Bonds in whole. Such new rate with respect to such Bonds shall be established by the Remarketing Agent in its sole judgment having due regard for prevailing financial market conditions at the lowest rate which will permit the Pledged Bonds or Borrower Bonds to be sold at a price of par plus accrued interest to such delivery date. The determination of a new Variable Rate with respect to such Bonds, as appropriate, by the Remarketing Agent shall be conclusive and binding upon the Authority, the Borrower, the Trustee, the Bank, the Tender Agent and the Bondholders.

***Payment of Interest on Bonds During Variable Rate Period.*** Interest on the Bonds is payable (i) prior to the Conversion Date on the first Business Day of each month, commencing on June 1, 2006, (ii) on the Conversion Date, and (iii) from and after the Conversion Date, on June 1 and December 1 of each year (each such date being an "Interest Payment Date") to the owners of record as of the close of business on the Record Date preceding any Interest Payment Date. During the Variable Rate Period the "Record Date" means, with respect to each Interest Payment Date, the Trustee's close of business on the Business Day preceding such Interest Payment Date. Prior to the Conversion Date, interest shall be computed on the basis of 365 or 366 days, as applicable, for the actual number of days elapsed. The principal of and the redemption premium, if any, and the interest on the Bonds shall be payable in lawful money of the United States of America. The principal of and redemption premium, if any, on the Bonds and the Purchase Price of the Bonds shall be payable at the Corporate Trust Office or other designated office of the Trustee. The interest on the Bonds shall be paid by check or draft of the Trustee mailed to the Persons in whose names the Bonds are registered on the Bond Register at the close of business on the Record Date next preceding each Interest Payment Date; provided, however, any registered holder of Bonds in the aggregate principal amount of \$1,000,000 or more as of the close of business on the Record Date preceding any Interest Payment Date may, by prior written instructions filed with the Trustee on or before the second Business Day preceding such Record Date (which instructions shall remain in effect until revoked by subsequent written instructions), instruct that interest payments for any period be made by wire transfer to any bank located in the continental United States of America.

## Conversion of Interest Rate on Bonds

During the Variable Rate Period, the interest rate on the Bonds, at the option of the Borrower, shall be converted from the Variable Rate to the Fixed Rate, upon delivery by the Borrower to the Trustee, the Remarketing Agent, the Bank and the Authority:

(1) on any Business Day during the Variable Rate Period, of a notice (the “Conversion Notice”) stating (i) that the Borrower intends to convert the interest rate on the Bonds to the Fixed Rate and specifying the proposed Conversion Date (the “Proposed Conversion Date”), which date shall be a Business Day at least 45 days after the date on which the Trustee receives the Conversion Notice; and (ii) whether the Bonds will be secured by a Letter of Credit during the Fixed Rate Period; and

(2) by 10:00 a.m. New York City time on the Proposed Conversion Date, of (i) an opinion of nationally recognized bond counsel acceptable to the Authority and the Trustee to the effect that the conversion of the interest rate on the Bonds is not prohibited by the laws of the State or by the Indenture and will not result in the inclusion of interest on the Bonds in gross income for federal income tax purposes (a “Favorable Opinion of Bond Counsel”); (ii) if the Borrower elects to secure the Bonds with a Letter of Credit during the Fixed Rate Period, an amendment to the Letter of Credit then in effect or an Alternate Letter of Credit, in either case to be effective on the Proposed Conversion Date and meeting the requirements of the Indenture; and (iii) a written undertaking by the Borrower, satisfactory in form and substance to the Remarketing Agent and the Authority, whereby the Borrower agrees to comply with the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, as then applicable; provided, however, that the Borrower shall not be required to make such a written undertaking if the Remarketing Agent provides the Authority, the Trustee and the Borrower with an opinion of counsel that an exemption from compliance with Rule 15c2-12 is available.

If (i) the Trustee receives written notification from the Borrower by the close of business on the Computation Date of the Borrower’s decision not to elect the conversion of the interest rate on the Bonds to the Fixed Rate on the Proposed Conversion Date, or (ii) the Borrower fails to satisfy the conditions of paragraph (2) above, or (iii) the Remarketing Agent fails to determine the Fixed Rate by the close of business on the fifth Business Day preceding the Proposed Conversion Date, the interest rate on the Bonds shall not be converted to the Fixed Rate on the Proposed Conversion Date. In such event, the Bonds will bear interest for the remaining portion of the current interest rate period at the Variable Rate then in effect, or for an interest rate period at the Variable Rate in effect for the immediately preceding interest rate period, and will continue to remain outstanding in accordance with the terms of the Indenture as if no such election had been made by the Borrower to convert the interest rate borne by the Bonds to the Fixed Rate; provided, however, that the Bonds will continue to be subject to mandatory tender on the Proposed Conversion Date as described below under “THE BONDS -Mandatory Tender of Bonds”.

## Redemption

The Bonds are not subject to redemption prior to maturity except as hereinafter provided.

**Optional Redemption.** On or prior to the Conversion Date, the Bonds are subject to redemption at any time prior to maturity, at the option of the Borrower, as a whole or in part in Authorized Denominations, at a redemption price of 100% of the principal amount thereof to be redeemed plus accrued interest to the date fixed for redemption, upon receipt by the Trustee not less than forty-five (45) days (or such shorter period as shall be acceptable to the Trustee) prior to such redemption date of a written direction from the Borrower stating that it intends to exercise its option to prepay Loan Repayments due under the Loan Agreement and thereby effect redemption of all or a portion of the Bonds.

During the Variable Rate Period, the Borrower shall have the option to cause the Bonds in whole, but not in part, to be subject to mandatory tender and purchase in lieu of an optional redemption of Bonds as described above. Such option may be exercised by delivery by the Borrower to the Trustee and the Remarketing Agent on or prior to the Business Day preceding the optional redemption date of a written notice specifying that the Bonds shall not be redeemed, but instead shall be subject to mandatory tender and purchase. Upon delivery of such notice, the Bonds

shall not be redeemed but will instead be subject to mandatory tender and purchase at a Purchase Price equal to the price at which the Bonds would have been redeemed on the date which would have been the optional redemption date.

The prior consent of the Bank shall be required for any optional redemption or mandatory tender and purchase in lieu of redemption unless the Corporation shall have deposited with the Trustee funds sufficient to pay the redemption or purchase price of the Bonds prior to the giving of notice of redemption or mandatory tender and purchase.

**Mandatory Redemption from Insurance and Condemnation Proceeds.** The Bonds are subject to mandatory redemption in whole at any time or in part (and if in part in Authorized Denominations; provided that no Bond may be redeemed in part if the principal amount to be outstanding following such partial redemption is not an Authorized Denomination) on any Interest Payment Date, at a redemption price equal to 100% of the aggregate principal amount of the Bonds to be redeemed plus accrued interest to the redemption date, in an amount equal to any insurance or condemnation proceeds deposited with the Trustee for the purpose of redemption pursuant to the Loan Agreement. During any period in which a Letter of Credit secures the Bonds, such redemption shall be effected by a drawing under the Letter of Credit and the Trustee shall use such insurance or condemnation proceeds to reimburse the Bank for such drawing pursuant to the Reimbursement Agreement.

**Selection of Bonds for Redemption.** If less than all the outstanding Bonds are called for redemption, the Trustee shall select, or arrange for the selection of, the Bonds to be redeemed by lot, in such manner as it shall in its discretion determine; provided that any such Bonds selected for redemption shall be in Authorized Denominations and no Bond may be redeemed in part if the principal amount to be outstanding following such partial redemption is not an Authorized Denomination. Notwithstanding the foregoing, Pledged Bonds and Borrower Bonds in that order, shall be first selected by the Trustee for redemption before any other Bonds are selected for redemption. "Borrower Bonds" means Bonds or beneficial interests in the Bonds owned by the Borrower that are not Pledged Bonds. "Pledged Bonds" means, at the time of determination thereof, any Bonds or beneficial interests in Bonds pledged or assigned to or otherwise held for the benefit of the Bank as a result of a payment under its Letter of Credit.

**Notice of Redemption.** Notice of redemption shall be mailed by the Trustee by first class mail, at least 15 days (30 days during the Fixed Rate period) but not more than 45 days before any redemption date to the registered owner of each Bond to be redeemed in whole or in part at its last address appearing on the Bond Register; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings for the redemption of any Bond, or portion thereof with respect to which no such failure or defect has occurred; and provided, further, that so long as the Letter of Credit is in effect, the Trustee shall not give notice of any optional redemption unless the Bank has consented in writing to such redemption. Any notice mailed as provided above shall be conclusively presumed to have been duly given, whether or not the Bondholder receives the notice. Additional notices of redemption may be given in accordance with the Indenture. All Bonds so called for redemption will cease to bear interest on the specified date set for redemption, provided moneys for their redemption have been duly deposited with the Trustee pursuant to the Indenture and, thereafter, the Holders of such Bonds called for redemption shall have no rights in respect thereof except to receive payment of the redemption price from the Trustee and, in the case of a partial redemption, a new Bond for any portion not redeemed in an Authorized Denomination.

### **Optional Tender for Purchase**

During the Variable Rate Period, each Beneficial Holder of a beneficial interest in the Bonds (other than Pledged Bonds and Borrower Bonds) may give written notice to the Tender Agent of a demand for purchase of such Beneficial Holder's beneficial interest (or portion thereof, provided that the portion thereof tendered is an Authorized Denomination; and provided, further, that the portion thereof retained is an Authorized Denomination) at a price equal to 100% of the principal amount of such beneficial interest (or authorized portion thereof) plus accrued and unpaid interest thereon to the date of purchase, without premium. Each such beneficial interest (or authorized portion thereof) will be purchased on the date designated by the Beneficial Holder; provided, however, such date must be a Business Day occurring not prior to the seventh day next succeeding the date of receipt of such notice by the Tender Agent. Any such notice will be irrevocable and shall state (i) the name and address of the Beneficial Holder, (ii) the CUSIP number, (iii) the principal amount of such beneficial interest (and the portion thereof to be

tendered, if less than the full principal amount is to be tendered) and (iv) the date on which such beneficial interest will be so purchased. Such beneficial interests will be deemed to have been surrendered for purchase on the purchase date specified in the notice.

### **Mandatory Tender for Purchase**

During the Variable Rate Period, each Bond (or beneficial interest therein) (other than a Pledged Bond or a Borrower Bond) is subject to mandatory tender, for purchase on each date described below:

- (i) on each Proposed Conversion Date;
- (ii) on the date upon which an Alternate Letter of Credit is to be substituted for the Letter of Credit then in effect during the Variable Rate Period;
- (iii) on the Interest Payment Date next preceding the expiration date of the Letter of Credit then in effect (as such date may be extended from time to time by the Bank, the “Stated Expiration Date”), if the Trustee has not received at least 20 days (or such shorter period as shall be acceptable to the Trustee, but not less than 15 days) prior to the Interest Payment Date next preceding such Stated Expiration Date either an extension of the then existing Letter of Credit or an Alternate Letter of Credit;
- (iv) on each date for which the Borrower, with the written consent of the Bank, has elected to purchase Bonds in lieu of an optional redemption;
- (v) on the second (2nd) Business Day following receipt by the Trustee of written notice from the Bank to the effect that an event of default has occurred and is continuing under the Reimbursement Agreement and the Bank is terminating the Letter of Credit, and directing the Trustee to call the Bonds for mandatory tender; and
- (vi) on the second (2nd) Business Day following receipt by the Trustee of written notice from the Bank following a drawing under the Letter of Credit for the payment of interest on the Bonds (which notice shall be received no later than the close of business on the sixth (6th) calendar day following such drawing) to the effect that an event of default under the Reimbursement Agreement has occurred and the amount available to be drawn under the Letter of Credit to pay interest on the Bonds will not be reinstated.

With respect to a mandatory tender pursuant to subparagraphs (i), (ii), (iii) of (iv) above, at least 15 days, but not more than 45 days, prior to such mandatory tender date, the Trustee shall give notice of such mandatory tender by first class mail to the holders of all Bonds at their addresses appearing on the registration books of the Authority maintained by the Trustee (the “Bond Register”). Such notice of mandatory tender shall (i) specify the mandatory tender date and the reason for the mandatory purchase on such date, (ii) if such mandatory tender date is a Proposed Conversion Date, state that such conversion to the Fixed Rate will not occur if the conditions described in the Indenture are not satisfied but that such mandatory tender will still occur on the Proposed Conversion Date, and (iii) state that all Bonds are subject to mandatory tender for purchase (or, if the Bonds are held in a book-entry only system, that the beneficial interests in the Bonds are subject to mandatory tender for purchase).

With respect to a mandatory tender pursuant to subparagraph (v) above, the Trustee shall, immediately upon receipt of written notice from the Bank to the effect that an event of default has occurred under the Reimbursement Agreement and the Bank is terminating the Letter of Credit, give written notice of such mandatory tender by telecopy or first class mail to the holders of all Bonds at their addresses appearing on the Bond Register. Such notice shall state: (a) the termination date of such Letter of Credit; and (b) that on the second (2nd) Business Day after receipt by the Trustee of such notice from the Bank (which date shall be specified), such Bonds are subject to mandatory tender for purchase (or, if the Bonds are held in a book-entry-only system, that the beneficial interests in the Bonds are subject to mandatory tender for purchase).

With respect to a mandatory tender pursuant to subparagraphs (vi) above, the Trustee shall, immediately upon receipt of written notice from the Bank to the effect that the amount available to be drawn under the Letter of Credit to pay interest on the Bonds will not be reinstated, give written notice of such mandatory tender by telecopy or first class mail to the holders of all Bonds at their addresses appearing on the Bond Register. Such notice shall state: (a) that the Trustee has received written notice from the Bank that the Bank will not reinstate the Letter of Credit as described above; and (b) that on the second (2nd) Business Day after receipt by the Trustee of such notice from the Bank (which date shall be specified), such Bonds are subject to mandatory tender for purchase (or, if the Bonds are held in a book-entry-only system, that the beneficial interests in the Bonds are subject to mandatory tender for purchase).

The failure by the Trustee to give any such notice of mandatory tender for purchase, or any defect therein, shall not in any way change the rights of the Holders or Beneficial Holders to have their Bonds (or beneficial interests therein) purchased on any such mandatory tender date or extend the period during which Bonds (or beneficial interests therein) may be tendered for such purchase. Any mandatory tender notice mailed as provided for herein shall be conclusively presumed to have been given, whether or not the Holder or Beneficial Holder receives such notice.

Beneficial interests in Bonds that are subject to mandatory tender for purchase, for which there has been irrevocably deposited in trust with the Tender Agent or the Trustee on or prior to such mandatory tender date an amount of money sufficient to pay the Purchase Price thereof on such mandatory tender date, will be deemed to have been surrendered for purchase on such mandatory tender date.

No owner of beneficial interests in Bonds deemed surrendered for purchase pursuant to the immediately preceding paragraph shall be entitled to any payment (including interest to accrue subsequent to the related mandatory tender date) other than the Purchase Price for such beneficial interests and any such beneficial interests shall no longer be entitled to the benefit and security of the Indenture, except for the purpose of the payment of the Purchase Price thereof.

#### **Optional Tenders Occurring after Notice of Mandatory Tender Date**

Any Bond or beneficial interest therein optionally tendered for purchase after the date on which the Trustee has notified the affected Holders or Beneficial Holders of a mandatory tender date as described above will not be remarketed unless the purchaser has been notified by the Remarketing Agent of the required mandatory tender for purchase. Any such notice will contain the same provisions as the mandatory tender notice delivered by the Trustee to the Holders or Beneficial Holders as described above. Any purchaser so notified must deliver a notice to the Trustee and the Tender Agent stating that such purchaser will tender its Bonds or beneficial interest therein for purchase on the related mandatory tender date.

**No representation is made herein as to the timely payment of principal and interest upon an optional or mandatory tender of beneficial interests in bonds under the book-entry system. Tenders of beneficial interests in bonds under the book-entry system will be governed by the procedures of DTC and its participants in effect from time to time. See APPENDIX B - "BOOK-ENTRY SYSTEM."**

#### **Bonds Deemed Purchased**

If moneys sufficient to pay the Purchase Price of Bonds to be purchased pursuant to the tender provision of the Indenture shall be held by the Tender Agent on the date such Bonds are to be purchased, such Bonds shall be deemed to have been purchased and shall be purchased, for all purposes of the Indenture, irrespective of whether or not such Bonds shall have been delivered to the Tender Agent, and the former Holder of such Bonds shall have no claim thereon, under the Indenture or otherwise, for any amount other than the Purchase Price thereof.

In the event any Bonds purchased as provided in the Indenture shall not be presented to the Tender Agent, the Tender Agent shall segregate and hold the moneys for the Purchase Price of such Bonds in trust, without liability for interest thereon, for the benefit of the former Holders of such Bonds, who shall, except as provided in the following sentence, thereafter be restricted exclusively to such moneys for the satisfaction of any claim for the

Purchase Price of such Bonds. Any moneys which the Tender Agent shall segregate and hold in trust for the payment of the Purchase Price of any Bond and remaining unclaimed for two (2) years after the date of purchase shall, upon the Borrower's written request to the Tender Agent, be paid to the Borrower. After the payment of such unclaimed moneys to the Borrower, the former Holder of such Bond shall look only to the Borrower for the payment thereof.

## **ESTIMATED SOURCES AND USES OF FUNDS**

The following table sets forth the estimated sources and uses of funds, including the proceeds to be received from the sale of the Bonds and the equity contribution of the Borrower:

<b>Sources:</b>	
Principal Amount of Bonds	\$12,305,000
Equity Contribution	<u>104,000</u>
<b>Total Sources</b>	<u><u>\$12,409,000</u></u>
<b>Uses:</b>	
Project Fund	\$11,410,000
Capitalized Interest <sup>(1)</sup>	498,000
Costs of Issuance <sup>(2)</sup>	<u>501,000</u>
<b>Total Uses</b>	<u><u>\$12,409,000</u></u>

<sup>(1)</sup> Used to pay interest on the Bonds for a period of approximately 10 months.

<sup>(2)</sup> Includes underwriting fee, Authority fees, financial advisor, Bank, legal, trustee and other expenses, including rating agency fees.

## **SECURITY AND SOURCE OF PAYMENT**

### **General**

The principal, premium, if any, and interest on the Bonds are payable solely from the Revenues received from the Borrower pursuant to the Loan Agreement and the other amounts pledged therefor under the Indenture. The Purchase Price of the Bonds tendered or deemed tendered for purchase pursuant to the Indenture is payable solely from the proceeds of the remarketing of such Bonds, draws on the Letter of Credit or any Alternate Letter of Credit for such Bonds, and amounts provided by the Borrower pursuant to the provisions of the Loan Agreement.

THE BONDS ARE LIMITED OBLIGATIONS OF THE AUTHORITY AND THE PRINCIPAL THEREOF, AND PREMIUM, IF ANY, AND INTEREST THEREON, ARE PAYABLE SOLELY FROM, AND SECURED IN ACCORDANCE WITH THEIR TERMS AND THE PROVISIONS OF THE INDENTURE SOLELY BY, THE REVENUES AND THE OTHER AMOUNTS PLEDGED THEREFOR THEREUNDER. THE PURCHASE PRICE OF THE BONDS IS PAYABLE SOLELY FROM, AND SECURED IN ACCORDANCE WITH THEIR TERMS AND THE PROVISIONS OF THE INDENTURE SOLELY BY, THE PROCEEDS OF THE REMARKETING OF THE BONDS, AMOUNTS MADE AVAILABLE UNDER THE LETTER OF CREDIT OR ANY ALTERNATE LETTER OF CREDIT AND AMOUNTS PROVIDED BY THE BORROWER PURSUANT TO THE LOAN AGREEMENT. NEITHER THE AUTHORITY, THE ASSOCIATION OF BAY AREA GOVERNMENTS ("ABAG"), ANY OF THE MEMBERS OF THE AUTHORITY OR ABAG, THE STATE, NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE AUTHORITY, TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) WILL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER, AND NONE OF THE BONDS OR ANY OF THE AUTHORITY'S AGREEMENTS OR OBLIGATIONS WILL BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF OR A PLEDGE OF THE FAITH AND CREDIT OF OR A LOAN OF THE CREDIT OF THE AUTHORITY, ABAG, OR THE MEMBERS OF THE AUTHORITY OR ABAG, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE AUTHORITY, TO THE LIMITED

EXTENT SET FORTH IN THE INDENTURE) WITHIN THE MEANING OF ANY CONSTITUTIONAL, OR STATUTORY PROVISION WHATSOEVER. NEITHER THE AUTHORITY NOR ABAG HAS ANY TAXING POWER.

*As indicated above, payment of the principal, Purchase Price and interest on the Bonds will be supported by the Letter of Credit. An investment decision to purchase the Bonds should be made solely on the basis of the creditworthiness of the Bank. This Official Statement does not contain any financial or operating information relating to the Borrower or its ability to make payments sufficient to pay the principal of, Purchase Price of or interest on the Bonds and prospective investors should not expect that the Borrower would be able to make payments sufficient to pay the principal of, Purchase Price of or interest on the Bonds.*

## **The Letter of Credit**

**Indenture Requirements.** The Indenture requires that the Letter of Credit must be an irrevocable letter of credit of a commercial bank providing for direct payments to or upon the order of the Trustee of amounts up to (1) the principal of the Bonds when due, at maturity or upon acceleration, redemption, purchase pursuant to a tender, upon a failed remarketing or otherwise; and (2) interest on the Bonds for a period of 45 days (or such other period as may be satisfactory to each Rating Agency then maintaining a rating on the Bonds) at the rate of 10% per annum; provided, however, that if a Letter of Credit will be in effect during the Fixed Rate Period, (A) the stated amount of such Letter of Credit must include interest on the Bonds for a period of 195 days (or such other number of days as may be required by any Rating Agency then rating the Bonds) at the Fixed Rate and any premium which would be payable on the Bonds if the Letter of Credit was not extended beyond its stated expiration date, and (B) the Letter of Credit will not cover any Liquidity Drawing.

**The Initial Letter of Credit** The Initial Letter of Credit is an irrevocable obligation of the Bank to pay to the Trustee, upon drawings made by the Trustee in strict compliance with the terms and conditions of the Initial Letter of Credit, up to (a) an amount equal to the outstanding principal amount of the Bonds to enable the Trustee to pay the principal amount of the Bonds when due at maturity or upon acceleration, redemption, purchase pursuant to a tender, upon a failed remarketing or otherwise, plus (b) an amount equal to 45 days interest on the Bonds at the maximum rate of 10% per annum (i) to enable the Trustee to pay interest on the Bonds when due and (ii) to enable the Trustee to pay the portion of the purchase price of Bonds tendered pursuant to the Indenture and not remarketed corresponding to the accrued interest on such Bonds. The original stated amount of the Initial Letter of Credit is \$12,456,706, of which \$12,305,000 is in respect of principal of the Bonds and \$151,706 is in respect of interest on the Bonds.

Under the Indenture, the Trustee is directed to draw upon the Initial Letter of Credit in the following circumstances:

- (a) to make timely payment of the interest on the Bonds;
- (b) to make timely payment of the principal of the Bonds at maturity, upon optional or mandatory call for redemption or upon acceleration of the Bonds; and
- (c) to make timely payment of the purchase price of Bonds required to be purchased upon an optional or mandatory tender for purchase pursuant to the provisions of the Indenture, to the extent remarketing proceeds or other funds are not available to make such payment under the Indenture.

Each drawing honored by the Bank under the Initial Letter of Credit shall immediately reduce the principal component and/or the interest component (as the case may be) of the amount available under the Initial Letter of Credit by the amount of such drawing, and the aggregate amount available under the Initial Letter of Credit shall be correspondingly reduced. The amount available under the Initial Letter of Credit, as so reduced, shall be reinstated only as follows:

(a) with respect to a drawing under the Initial Letter of Credit to pay interest, the interest component shall be reinstated automatically on the seventh calendar day following the date such drawing is honored by an amount equal to the amount of such drawing for interest, unless the Trustee shall have received written notice from the Bank on or before the sixth calendar day that the Bank has not been reimbursed in full for any such drawing or any other Event of Default has occurred under the Initial Reimbursement Agreement and such reinstatement shall not occur; and

(b) with respect to a drawing under the Initial Letter of Credit to pay the purchase price of any Bonds, the principal component and the interest component with respect to such Bonds shall be reinstated when and to the extent that the Bank has received immediately available funds to reimburse the Bank for such drawing pursuant to the Initial Reimbursement Agreement and the Trustee has delivered to the Bank the reinstatement certificate in the form prescribed by the Initial Letter of Credit.

The amount available under the Initial Letter of Credit and the respective principal and interest components thereof shall also be reduced automatically following the payment of principal of the Bonds pursuant to the Indenture, in each case upon receipt by the Bank from the Trustee of a certificate in the form prescribed by the Initial Letter of Credit, each such reduction to be in the amount necessary to reduce the amount available under the Initial Letter of Credit and the principal and the interest components thereof to the respective amounts specified by the Trustee in such certificate.

The Initial Letter of Credit will expire upon the first to occur of the following: (a) the Stated Expiration Date (as defined in the Initial Letter of Credit and used herein), (b) the earlier of (i) the date which is five days following the date which the interest rate on all Bonds has been converted to a Fixed Rate as such date is specified in a certificate in the form prescribed by the Initial Letter of Credit (the "Conversion Date") or (ii) the date on which the Bank honors a drawing under the Initial letter of Credit on or after the Conversion Date, (c) the fifteenth day after the date on which the Bank receives a certificate from the Trustee in the form prescribed by the Initial Letter of Credit to the effect that there are no Bonds outstanding other than Bonds secured by an Alternate Letter of Credit meeting the requirements of the Indenture or Bonds bearing interest at a Fixed Rate, (d) the sixth calendar day after the Trustee receives written notice from the Bank stating that an event of default has occurred and is continuing under the Initial Reimbursement Agreement, directing the Trustee to call the Bonds for mandatory tender or (e) five days after the Trustee receives written notice from the Bank stating that an event of default has occurred and is continuing under the Initial Reimbursement Agreement, directing the Trustee to declare the Bonds immediately due and payable pursuant to the Indenture, and stating that the Initial Letter of Credit will terminate on such fifth calendar day. The Stated Expiration Date of the Initial Letter of Credit is May 1, 2009. The Stated Expiration Date may be extended beyond the Stated Expiration Date then in effect at the sole discretion of the Bank upon request of the Borrower.

### **Alternate Letter of Credit**

The Borrower may elect to replace the Letter of Credit with an Alternate Letter of Credit conforming to the terms set forth in the Indenture. Any Alternate Letter of Credit shall have a Stated Expiration Date that is at least two Business Days following the Interest Payment Date next preceding such Stated Expiration Date.

Notwithstanding anything to the contrary contained in the Indenture, (1) while the Bonds bear interest at the Variable Rate, they shall be secured by a Letter of Credit, and (2) if the Bonds are converted to bear interest at a Fixed Rate, they shall not be secured by a Letter of Credit unless, immediately prior to the Conversion Date, the Remarketing Agent makes an objective determination in a certificate delivered to the Trustee and the Authority that the present value of the cost of securing the Bonds with the Letter of Credit (including the cost of paying interest on the Bonds at the expected interest rate and all fees associated with the Letter of Credit) would be less than the cost of paying interest on the Bonds if it is not so secured (using as a discount rate the yield to maturity on the Bonds being converted to a Fixed Rate and treating the fees paid and to be paid for the Letter of Credit as interest on the Bonds). In addition, if the Fixed Rate Period is then in effect the Borrower may not furnish an Alternate Letter of Credit with a stated expiration date earlier than the Stated Expiration Date of the Letter of Credit then in effect.

Not less than 20 days prior to the delivery of an Alternate Letter of Credit, (or such shorter period as shall be acceptable to the Trustee but not less than 15 days) the Borrower is required to give notice of such replacement to

the Trustee. During the Variable Rate Period, upon receipt of such notice, the Trustee shall take all actions necessary to subject the Bonds to mandatory tender as described under “THE BONDS – Mandatory Tender for Purchase” on the proposed effective date of such Alternate Letter of Credit.

Any Alternate Letter of Credit delivered to the Trustee must be accompanied by (1) a Favorable Opinion of Bond Counsel as to the delivery of the Alternate Letter of Credit; (2) an opinion of counsel stating that delivery of the Alternate Letter of Credit is authorized under the Indenture and complies with its terms; (3) an opinion of counsel to the provider of such Alternate Letter of Credit stating that such Alternate Letter of Credit is a legal, valid, binding and enforceable obligation of such provider in accordance with its terms; and (4) evidence satisfactory to the Trustee that the long-term unsecured indebtedness of the provider of the Alternate Letter of Credit (or parent company of the provider of the Alternate Letter of Credit) is rated by a Rating Agency in one of its three highest rating categories (without regard for any gradation within a category). In addition, if the Borrower or any natural person, firm, association or public body related to the Borrower within the meaning of Section 147(a) of the Code grants a security interest in any cash, securities or investment type property to the provider of such Alternate Letter of Credit, the Borrower must furnish the Trustee a Favorable Opinion of Bond Counsel with respect to such grant.

### **Revenues and Loan Repayments**

The Authority is obligated to pay the principal of, premium, if any, and interest on the Bonds solely from the Revenues received from the Borrower under the Loan Agreement and the other amounts pledged therefor under the Indenture. Pursuant to the Indenture, the Authority has pledged to the Trustee for the benefit of the Holders all of the Revenues. “Revenues” means all amounts received by the Authority or the Trustee for the account of the Authority pursuant or with respect to the Loan Agreement or the Letter of Credit (other than payments of the purchase price of any Bonds), including, without limiting the generality of the foregoing, Loan Repayments (including both timely and delinquent payments, any late charges, and paid from whatever source), prepayments, insurance proceeds, condemnation proceeds, and all interest, profits or other income derived from the investment of amounts in the funds and accounts established pursuant to the Indenture, but not including Additional Payments, or any moneys paid for deposit into the Rebate Fund or for the purchase of Bonds.

FOR A FURTHER DESCRIPTION OF THE PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT, INCLUDING COVENANTS WHICH SECURE THE BONDS, AND EVENTS OF DEFAULT, See APPENDIX A – “DEFINITIONS AND SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL DOCUMENTS.”

### **THE BANK, THE LETTER OF CREDIT AND THE REIMBURSEMENT AGREEMENT**

#### **The Bank**

The information herein relates to and has been provided by the Bank for inclusion in this Official Statement. No other party has independently verified or assumes any responsibility for such information, and neither the Authority nor the Borrower nor the Underwriter makes any representation as to the accuracy or completeness of such information. The delivery of the Official Statement shall not create any implication that there has been no change in the affairs of the Bank since the date hereof, or that the information contained or incorporated by reference in this section is correct as of any time subsequent to its date.

KBC Bank N.V., New York Branch ("KBC NYB") is an unincorporated branch of KBC Bank N.V., a naamloze vennootschap (public company of limited liability) organized under the laws of Belgium, whose principal office is located in Brussels, Belgium. KBC Bank N.V. conducts operations through additional offices and agencies in the United States and around the world. Created on June 4, 1998 through the combination of two predecessor Belgian banks, Kredietbank N.V. and CERA Bank C.V., KBC Bank N.V. is subject to regulation by the Belgium Banking Commission and to Belgian banking and accounting law. KBC Bank N.V. maintains its records and prepares its financial statements in accordance with accounting principles generally accepted in Belgium. Such records and financial statements are maintained and prepared in Euro currency (EUR).

One of the largest commercial banks in Belgium, KBC Bank N.V. operates as a universal bank, engaged in commercial and investment banking, and offers comprehensive financial services. In contrast with the two other major Belgian banks, KBC Bank N.V.'s branches in Belgium are located exclusively in Flanders and Brussels. KBC Bank N.V. is indirectly represented through CBC Banque S.A., a majority-owned subsidiary with branches in the Walloon region and Brussels.

KBC NYB was originally established in 1977 as a New York Branch of Kredietbank N.V., and has been relicensed by the Banking Department of the State of New York as a New York Branch of KBC Bank N.V. to provide a full range of services in New York. In addition to handling foreign exchange transactions, KBC NYB is active in international payment transactions and the clearing of commercial payments and professional transactions in U.S. Dollars. KBC NYB is also involved in providing financial services, particularly credit, for European (including Belgian) companies operating in the United States, as well as for United States corporations.

#### **Selected Consolidated Financial Data of KBC Bank N.V.**

Year Ended  
December 31, 2005  
(EUR Millions)

Total Assets	EUR 325,801
Amounts Owed to Customers	171,572
Loans and Advances to Customers	119,475
Total Equity	17,466
Net Income	2,249

Conversion Rate: As of December 31, 2005, EUR 0.848 = US\$1.00

KBC NYB will provide, upon written request and without charge, a copy of KBC Bank N.V.'s Annual Report for the year ended December 31, 2005. Written requests should be directed to: KBC Bank N.V., New York Branch, 125 West 55th Street, 10th Floor, New York, New York 10019, Attention: Controller.

The delivery of this Official Statement shall not create any implication that there has been no change in the affairs of KBC Bank N.V. since December 31, 2005 or that information contained or referred to above under the heading "The Bank" is current as of any time subsequent to such date.

#### **The Reimbursement Agreement**

The Bonds are supported by an irrevocable direct-pay letter of credit dated May 2, 2006 (the "Initial Letter of Credit") which will be issued by the Bank pursuant to the terms and provisions of the Reimbursement Agreement dated as of May 1, 2006 (the "Initial Reimbursement Agreement"), between the Borrower and the Bank. The following summarizes certain provisions of the Initial Reimbursement Agreement, to which reference is made for the complete provisions thereof.

### Optional Redemption of the Bonds

The Borrower has covenanted with the Bank in the Initial Reimbursement Agreement to exercise its right to optionally redeem Bonds in part on the dates and in the amounts indicated below:

May 15	Amount	May 15	Amount
2006	\$ 0	2022	\$395,000
2007	0	2023	415,000
2008	0	2024	440,000
2010	205,000	2025	465,000
2011	215,000	2026	490,000
2012	225,000	2027	520,000
2013	240,000	2028	550,000
2014	255,000	2029	580,000
2015	270,000	2030	610,000
2016	285,000	2031	645,000
2017	300,000	2032	685,000
2018	315,000	2033	720,000
2019	335,000	2034	760,000
2020	355,000	2035	805,000
2021	375,000	2036*	850,000

\* Final Maturity

The Bank may agree with the Borrower to amend or waive this covenant at any time without notice to or consent of the Authority, the Trustee or the Bondholders. Consequently, Bondholders should not rely on this schedule in determining whether their Bonds may be called for redemption.

### Events Of Default

“Events of Default” under the Initial Reimbursement Agreement include the following:

- (a) the Borrower shall default in the payment when due of (i) any amount of principal of or interest on any Drawing or Liquidity Advance (as those terms are defined in the Initial Reimbursement Agreement) when the same shall become due and payable or (ii) any principal of or interest on any Bonds for any reason other than the failure of the Bank to perform its obligations hereunder;
- (b) the Borrower shall default in the payment within five business days of any other amount then due under the Initial Reimbursement Agreement;
- (c) the Borrower shall fail to observe or perform certain terms, covenants, conditions or agreements contained in the Initial Reimbursement Agreement;
- (d) the Borrower shall fail to observe or perform certain other terms, covenants, conditions or agreements contained or incorporated by reference in the Initial Reimbursement Agreement (other than those covered by clause (a), (b) or (c) under this subheading “Events Of Default”) and such failure shall remain unremedied for thirty days;
- (e) any representation, warranty, certification or statement made by the Borrower or Kenosha (as defined in the Initial Reimbursement Agreement and herein “Kenosha”) in (or incorporated by reference in) the Initial Reimbursement Agreement or any Related Document (as defined in the Initial Reimbursement Agreement) to which the Borrower or Kenosha is a party or in any certificate, financial statement or other document delivered by the Borrower or Kenosha pursuant to the Initial Reimbursement

Agreement or any Related Document shall prove to have been incorrect in any material respect when made (or deemed made);

(f) the occurrence of any “event of default,” as that term is defined in any Related Document (including, without limitation, the Support Agreement), or any event or condition shall occur which results in the acceleration of the maturity of any debt in excess of \$250,000 or enables the holder of any debt in excess of \$250,000 or any Person (as defined in the Initial Reimbursement Agreement) acting on such holder’s behalf to accelerate the maturity thereof;

(g) (i) any member of an ERISA Group (as defined in the Initial Reimbursement Agreement) shall fail to pay when due an amount or amounts aggregating in excess of \$50,000 which it shall have become liable to pay under Title IV of ERISA and (a) which liability in excess of \$25,000 could reasonably be expected to be imposed on the Borrower or (b) which results in the Borrower’s failure to observe or perform the ERISA covenant set forth in the Initial Reimbursement Agreement; or notice of intent to terminate a Material Plan (as defined in the Initial Reimbursement Agreement) shall be filed under Title IV of ERISA by any member of an ERISA Group, any plan administrator or any combination of the foregoing and (a) such termination could reasonably be expected to be result in a liability in excess of \$25,000 to the Borrower or (b) which results in the Borrower’s failure to observe or perform the ERISA covenant set forth in the Initial Reimbursement Agreement; or the PBGC (as defined in the Initial Reimbursement Agreement) shall institute proceedings under Title IV of ERISA to terminate, to impose liability (other than for premiums under Section 4007 of ERISA) in respect of, or to cause a trustee to be appointed to administer any Material Plan and (a) the institution of such proceedings could reasonably be expected to result in a liability in excess of \$25,000 to the Borrower or (b) which results in the Borrower’s failure to observe or perform the ERISA covenant set forth in the Initial Reimbursement Agreement; or a condition shall exist by reason of which the PBGC would be entitled to obtain a decree adjudicating that any Material Plan must be terminated and (a) such condition could reasonably be expected to result in a liability in excess of \$25,000 to the Borrower or (b) which results in the Borrower’s failure to observe or perform the ERISA covenant set forth in the Initial Reimbursement Agreement; or (ii) the Borrower shall fail to pay when due an amount or amounts aggregating in excess of \$25,000 which it shall have become liable to pay under Title IV of ERISA; or notice of intent to terminate a Material Plan shall be filed under Title IV of ERISA by the Borrower, any plan administrator or any combination of the foregoing; or the PBGC shall institute proceedings under Title IV of ERISA to terminate, to impose liability (other than for premiums under Section 4007 of ERISA) in respect of, or to cause a trustee to be appointed to administer any Material Plan; or a condition shall exist by reason of which the PBGC would be entitled to obtain a decree adjudicating that any Material Plan must be terminated; or there shall occur a complete or partial withdrawal from, or a default, within the meaning of Section 4219(c)(5) of ERISA, with respect to, one or more Multiemployer Plans which could cause the Borrower to incur a current payment obligation in excess of \$25,000;

(h) the Borrower shall (1) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or a substantial part of its Property (as defined in the Initial Reimbursement Agreement), (2) consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, (3) make a general assignment for the benefit of creditors, (4) fail generally to pay its debts as they become due, or (5) take any corporate action to authorize any of the foregoing;

(i) an involuntary case or other proceeding shall be commenced against the Borrower seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its Property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of ninety days; or an order for relief shall be entered against the Borrower under the federal bankruptcy laws as now or hereafter in effect;

(j) a judgment or judgments or order for the payment of money in excess of \$250,000 in the aggregate shall be rendered against the Borrower with respect to which, in the opinion of the Bank, adequate cash reserves have not been established, and such judgment or order shall continue unsatisfied, unstayed or uncontested in good faith for a period of fifteen (15) days (except that a judgment or order shall not be deemed to be unsatisfied to the extent that a licensed insurance company concedes in writing its obligation to pay such judgment or order and the deductible therefor does not exceed \$250,000);

(k) the Borrower shall fail to make any payment when due in respect of any debt in excess of \$100,000 and such failure shall continue beyond any applicable period of grace specified in any underlying indenture, contract or instrument providing for the creation of or concerning such debt;

(l) the Initial Reimbursement Agreement, the Bonds, the Indenture, the Support Agreement or any other Related Document for any reason ceases to be valid and binding on the Borrower to which the Borrower is a party in accordance with its terms or is declared, pursuant to a final judgment, to be null and void; or the validity or enforceability of the Reimbursement Agreement, the Bonds, the Indenture, the Support Agreement or any other Related Document is repudiated, rejected or contested through legal proceedings by the Borrower to which the Borrower is a party; or a proceeding is commenced by the Borrower seeking to establish the invalidity or unenforceability of the Initial Reimbursement Agreement, the Bonds, Indenture, the Support Agreement or any other Related Document;

(m) a moratorium on the payment of any debt of the Borrower shall have been announced or declared in writing;

(n) any debt in excess of \$250,000 of the Borrower shall have been found to have been illegally issued or unenforceable by a final and non-appealable judgment of a court of competent jurisdiction; or

(o) failure by Kenosha to maintain at least \$950,000 in the Debt Service Reserve Account (as defined in the Initial Reimbursement Agreement); provided however any failure of Kenosha to maintain such amount in the Debt Service Reserve Account as a result of any withdrawal of funds from the Debt Service Reserve Account in order to pay any Obligations (as defined in the Initial Reimbursement Agreement) under the Reimbursement Agreement shall not constitute an Event of Default under the Initial Reimbursement Agreement so long as Kenosha replenishes such amount within thirty (30) days of such withdrawal.

## **Remedies**

Upon the occurrence of any event of default under the Initial Reimbursement Agreement, the Bank, may exercise any one or more of the following rights and remedies in addition to any other remedies herein or by law provided:

(a) by written notice to the Borrower require that the Borrower immediately prepay to the Bank in immediately available funds an amount equal to the Available Amount (as defined in the Initial Reimbursement Agreement) (such amounts to be held by the Bank as collateral security for all obligations of the Borrower to reimburse the Bank for any Drawings under the Letter of Credit (including any Liquidity Advances)); provided, however, that in the case of an event of default described in clause (h) or (i) under the subheading "Events Of Default" above, such prepayment obligations shall automatically become immediately due and payable without any notice (unless the coming due of such obligations is waived by the Bank in writing);

(b) by written notice to the Borrower, declare all obligations of the Borrower to reimburse the Bank for any Drawings under the Letter of Credit (including any Liquidity Advances) to be, and such amounts shall thereupon become, immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower, provided that upon the occurrence of an event of default under clause (h) or (i) under the subheading "Events Of Default" below

such acceleration shall automatically occur (unless such automatic acceleration is waived by the Bank in writing);

(c) give notice of the occurrence of any event of default to the Trustee, which notice shall state that it is a notice of default under the Initial Reimbursement Agreement and direct the Trustee to cause an acceleration of the Bonds pursuant to Section 7.02 of the Indenture, thereby causing the Letter of Credit and the Bank's obligation to make Liquidity Advances pursuant to the terms of the Initial Reimbursement Agreement to terminate five (5) days thereafter.

(d) give notice of the occurrence of any event of default to the Trustee, which notice shall state that it is a notice of default under the Initial Reimbursement Agreement and direct the Trustee to cause a mandatory tender of the Bonds pursuant to Section 4.06(B)(v) of the Indenture, thereby causing the Letter of Credit and the Bank's obligation to make Liquidity Advances pursuant to the terms of the Reimbursement Agreement to terminate six (6) days thereafter.

(e) pursue any rights and remedies it may have under the Related Documents relating to the Bonds; or

(f) pursue any other action available at law or in equity.

### THE BORROWER

Our Lady of Fatima Villa, Inc. (the "Borrower") is a California nonprofit public benefit corporation, which owns and operates an assisted living and skilled nursing facility in Saratoga, California.

***As indicated above, payment of the principal, Purchase Price and interest on the Bonds will be supported by the Letter of Credit. An investment decision to purchase the Bonds should be made solely on the basis of the creditworthiness of the Bank. This Official Statement does not contain any financial or operating information relating to the Borrower or its ability to make payments sufficient to pay the principal, Purchase Price or interest on the Bonds and prospective investors should not expect that the Borrower would be able to make payments sufficient to pay the principal, Purchase Price or interest on the Bonds.***

### THE PROJECT

The Bonds are being issued to finance and refinance the costs of the improvement and equipping of the Borrower's assisted living and skilled nursing facility. A portion of the proceeds of the Bonds will also be applied to pay certain costs of issuance.

### THE AUTHORITY

The Authority is a joint powers agency duly organized and existing under the laws of the State of California. The Authority was formed pursuant to the terms of a Joint Powers Agreement, dated as of April 1, 1990, as amended as of September 18, 1990 and June 9, 1992, and the Joint Exercise of Powers Act of the State (constituting Chapter 5, commencing with Section 6500, of Division 7 of Title 1 of the California Government Code), in order to assist nonprofit corporations and other entities to obtain financing for projects located within the several jurisdictions of Authority members with purposes serving the public interest.

THE BONDS ARE LIMITED OBLIGATIONS OF THE AUTHORITY AND THE PRINCIPAL THEREOF, AND PREMIUM, IF ANY, AND INTEREST THEREON, ARE PAYABLE SOLELY FROM, AND SECURED IN ACCORDANCE WITH THEIR TERMS AND THE PROVISIONS OF THE INDENTURE SOLELY BY, THE REVENUES AND THE OTHER AMOUNTS PLEDGED THEREFOR THEREUNDER. THE PURCHASE PRICE OF THE BONDS IS PAYABLE SOLELY FROM, AND SECURED IN ACCORDANCE WITH THEIR TERMS AND THE PROVISIONS OF THE INDENTURE SOLELY BY, THE PROCEEDS OF THE REMARKETING OF THE BONDS, AMOUNTS MADE AVAILABLE UNDER THE LETTER OF CREDIT OR ANY ALTERNATE LETTER OF CREDIT, AND AMOUNTS PROVIDED BY THE BORROWER, AT ITS

SOLE OPTION, PURSUANT TO THE LOAN AGREEMENT. NEITHER THE AUTHORITY, ABAG, ANY OF THE MEMBERS OF THE AUTHORITY OR ABAG, THE STATE, NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE AUTHORITY, TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) WILL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER, AND NONE OF THE BONDS OR ANY OF THE AUTHORITY'S AGREEMENTS OR OBLIGATIONS WILL BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF OR A PLEDGE OF THE FAITH AND CREDIT OF OR A LOAN OF THE CREDIT OF THE AUTHORITY, ABAG, OR THE MEMBERS OF THE AUTHORITY OR ABAG, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE AUTHORITY, TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) WITHIN THE MEANING OF ANY CONSTITUTIONAL, OR STATUTORY PROVISION WHATSOEVER. NEITHER THE AUTHORITY NOR ABAG HAS ANY TAXING POWER.

## **INVESTMENT RISKS**

The purchase of the Bonds involves certain investment considerations and risks that are discussed throughout this Official Statement. Accordingly, each prospective purchaser of the Bonds should make an independent evaluation of all of the information presented in this Official Statement in order to make an informed investment decision. Certain investment risks are described below.

### **Limitations of the Letter of Credit**

The ratings on the Bonds could be downgraded or withdrawn if the Bank were to be downgraded, placed on credit watch or have its ratings suspended or withdrawn or were to refuse to perform under the Letter of Credit.

The ability to obtain funds under the Letter of Credit in accordance with its terms may be limited by federal or state law. Banks generally are required by law to honor letters of credit, even if a dispute were to develop between a bank and its borrower. The defenses allowed by law to the payment of draws on letters of credit are limited to specified circumstances. If one of those circumstances were to occur, however, it is possible that the Bank would fail to make a payment when due under the Letter of Credit.

### **Tax-Exempt Status of the Borrower**

The tax-exempt status of the Bonds presently depends upon maintenance by the Borrower of its status as an organization described in section 501(c)(3) of the Code. The maintenance of such status is contingent on compliance with general rules promulgated in the Code and related regulations regarding the organization and operation of tax-exempt entities, including their operation for charitable and other permissible purposes and their avoidance of transactions that may cause their earnings or assets to inure to the benefit of private individuals. As these general principles were developed primarily for public charities that do not conduct technical operations and business activities, they often do not adequately address the operations and transactions entered into by providers of health care services, including providers of home health and hospice services, such as the Borrower. Many activities or categories of activities have not been addressed in any official opinion, interpretation or policy of the Internal Revenue Service (the "IRS").

In recent years, the IRS has increased the frequency and scope of its audit and other enforcement activity regarding tax-exempt health care organizations. If the IRS were to find that the Borrower has participated in activities in violation of certain regulations or rulings, the tax-exempt status of the Borrower could be in jeopardy. Although the IRS has not frequently revoked the 501(c)(3) tax-exempt status of nonprofit health care corporations, it could do so in the future. Loss of tax-exempt status by the Borrower potentially could result in loss of tax exemption of the Bonds and defaults in covenants regarding the Bonds likely would be triggered. Loss of tax-exempt status also could result in substantial tax liabilities on income of the Borrower. For these reasons, loss of tax-exempt status could have a material adverse effect on the financial condition of the Borrower.

In addition to revocation of exempt status, the IRS may impose penalty excise taxes on certain "excess benefit transactions" involving 501(c)(3) and 501(c)(4) organizations and "disqualified persons." An excess benefit

transaction is one in which a disqualified person or entity receives more than fair market value from the exempt organization or pays the exempt organization less than fair market value for property or services, or shares the net revenues of the tax-exempt entity. A disqualified person is a person (or an entity) who is in a position to exercise substantial influence over the affairs of the exempt organization during the five years preceding an excess benefit transaction. The statute imposes excise taxes on the disqualified person and any “organization manager” who knowingly participates in an excess benefit transaction. The intermediate sanctions rules do not penalize the exempt organization itself, so there would be no direct impact on the Borrower or the tax status of the Bonds if an excess benefit transaction were subject to IRS enforcement.

In recent years, state, county and local taxing authorities have been undertaking audits and reviews of the operations of tax-exempt health care providers with respect to their real property tax exemptions. In some cases, particularly where such authorities are dissatisfied with the amount of services provided to indigents, the real property tax-exempt status of the health care providers has been questioned. The real property of the Borrower is exempt from real property taxation. An investigation or audit could lead to a challenge that could ultimately affect the real property tax exemption of the Borrower.

It is not possible to predict the scope or effect of future legislative or regulatory actions with respect to taxation of nonprofit corporations. There can be no assurance that future changes in the laws and regulations of state or local governments will not materially adversely affect the operations and financial condition of the Borrower by requiring it to pay income or local property taxes.

In recent years, the IRS and state, county and local tax authorities have been undertaking audits and reviews of the operations of tax-exempt organizations with respect to their exempt activities and the generation of unrelated business taxable income (“UBTI”). To the extent that the Borrower participates in activities that may generate UBTI, an investigation or audit could lead to a challenge that could result in taxes, interest and penalties with respect to unreported UBTI and in some cases ultimately could affect the tax-exempt status of the Borrower, as well as the exclusion from gross income for federal income tax purposes of the interest payable on the Bonds.

## **ABSENCE OF MATERIAL LITIGATION**

### **The Authority**

To the best knowledge of the Authority, there is no controversy of any nature now pending or threatened against the Authority which seeks to restrain or enjoin the sale or issuance of the Bonds or which in any way contests or affects the validity of the Bonds or any proceedings of the Authority taken with respect to the issuance or sale thereof, or the pledge or application of any moneys or security provided for the payment of the Bonds, the use of the Bonds proceeds or the existence or powers of the Authority relating to the issuance of the Bonds.

### **The Borrower**

There is no controversy or litigation of any nature now pending against the Borrower or, to the knowledge of its officers, threatened, restraining or enjoining the issuance of the Bonds or in any way contesting or affecting the validity of the Bonds, or any proceedings of the Borrower taken concerning the issuance or sale thereof, or the collection of Revenues pledged under the Indenture.

## **TAX MATTERS**

In the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to the Authority (“Bond Counsel”), based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Code and is exempt from State of California personal income taxes. Bond Counsel is of the further opinion that interest on the Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although Bond Counsel observes that such interest is included in adjusted current earnings when calculating corporate

alternative minimum taxable income. A complete copy of the proposed form of opinion of Bond Counsel is set forth in APPENDIX C hereto.

The Code imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal income tax purposes of interest on obligations such as the Bonds. The Authority and the Borrower have made certain representations and covenanted to comply with certain restrictions, conditions and requirements designed to ensure that interest on the Bonds will not be included in federal gross income. Inaccuracy of these representations or failure to comply with these covenants may result in interest on the Bonds being included in gross income for federal income tax purposes, possibly from the date of original issuance of the Bonds. The opinion of Bond Counsel assumes the accuracy of these representations and compliance with these covenants. Bond Counsel has not undertaken to determine (or to inform any person) whether any actions taken (or not taken), or events occurring (or not occurring), or any other matters coming to Bond Counsel's attention after the date of issuance of the Bonds may adversely affect the value of, or the tax status of interest on, the Bonds.

In addition, Bond Counsel has relied, among other things, on the opinion of Diepenbrock Harrison, A Professional Corporation, Counsel to the Borrower, regarding the current qualification of the Borrower as an organization described in Section 501(c)(3) of the Code and the intended operation of the facilities to be financed by the Bonds as substantially related to the Borrower's charitable purpose under Section 513(a) of the Code. Such opinion is subject to a number of qualifications and limitations. Furthermore, Counsel to the Borrower cannot give and has not given any opinion or assurance about the future activities of the Borrower, or about the effect of future changes in the Code, the applicable regulations, the interpretation thereof or changes in enforcement thereof by the Internal Revenue Service. Failure of the Borrower to be organized and operated in accordance with the Internal Revenue Service's requirements for the maintenance of its status as an organization described in Section 501(c)(3) of the Code, or to operate the facilities financed by the Bonds in a manner that is substantially related to the Borrower's charitable purpose under Section 513(a) of the Code, may result in interest payable with respect to the Bonds being included in federal gross income, possibly from the date of the original issuance of the Bonds.

The interest rate mode and certain requirements and procedures contained or referred to in the Indenture, the Loan Agreement, the Tax Certificate and other relevant documents may be changed and certain actions (including, without limitation, defeasance of the Bonds) may be taken or omitted under the circumstances and subject to the terms and conditions set forth in such documents. Bond Counsel expresses no opinion as to any Bond or the interest thereon if any such change occurs or action is taken or omitted upon the advice or approval of bond counsel other than Orrick, Herrington & Sutcliffe LLP.

Although Bond Counsel is of the opinion that interest on the Bonds is excluded from gross income for federal income tax purposes and is exempt from State of California personal income taxes, the ownership or disposition of, or the accrual or receipt of interest on, the Bonds may otherwise affect a Beneficial Holder's federal, state or local tax liability. The nature and extent of these other tax consequences depends upon the particular tax status of the Beneficial Holder or the Beneficial Holder's other items of income or deduction. Bond Counsel expresses no opinion regarding any such other tax consequences.

Future legislation, if enacted into law, or clarification of the Code may cause interest on the Bonds to be subject, directly or indirectly, to federal income taxation, or otherwise prevent Beneficial Holders from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such future legislation or clarification of the Code may also affect the market price for, or marketability of, the Bonds. Prospective purchasers of the Bonds should consult their own tax advisers regarding any pending or proposed federal tax legislation, as to which Bond Counsel expresses no opinion.

The opinion of Bond Counsel is based on current legal authority, covers certain matters not directly addressed by such authorities, and represents Bond Counsel's judgment as to the proper treatment of the Bonds for federal income tax purposes. It is not binding on the IRS or the courts. Furthermore, Bond Counsel cannot give and has not given any opinion or assurance about the future activities of the Authority or the Borrower, or about the effect of future changes in the Code, the applicable regulations, the interpretation thereof or the enforcement thereof by the IRS. The Authority and the Borrower have covenanted, however, to comply with the requirements of the Code.

Bond Counsel's engagement with respect to the Bonds ends with the issuance of the Bonds, and, unless separately engaged, Bond Counsel is not obligated to defend the Authority, the Borrower or the Beneficial Holders regarding the tax-exempt status of the Bonds in the event of an audit examination by the IRS. Under current procedures, parties other than the Authority, the Borrower and their appointed counsel, including the Beneficial Holders, would have little, if any, right to participate in the audit examination process. Moreover, because achieving judicial review in connection with an audit examination of tax-exempt bonds is difficult, obtaining an independent review of IRS positions with which the Authority or the Borrower legitimately disagrees, may not be practicable. Any action of the IRS, including but not limited to selection of the Bonds for audit, or the course or result of such audit, or an audit of bonds presenting similar tax issues may affect the market price for, or the marketability of, the Bonds, and may cause the Authority, the Borrower or the Beneficial Holders to incur significant expense.

## **LEGAL MATTERS**

Certain legal matters incident to the issuance of the Bonds are subject to the approving opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to the Authority. A copy of the proposed form of opinion of Bond Counsel is attached hereto as APPENDIX C. Bond Counsel undertakes no responsibility for the accuracy, completeness or fairness of this Official Statement. Certain legal matters will be passed upon for the Borrower by its counsel, Diepenbrock Harrison, A Professional Corporation, Sacramento, California, for the Authority by Jones Hall, A Professional Law Corporation, San Francisco, California, and for the Bank by its counsel, Chapman and Cutler LLP, Chicago, Illinois.

## **RATING**

Moody's Investors Service ("Moody's") is expected to assign a rating of "Aa3/VMIG 1" to the Bonds based upon the delivery of the Letter of Credit. Any explanation of the significance of such rating may only be obtained from Moody's. Generally, rating agencies base their ratings on such information and materials and on investigations, studies and assumptions made by the rating agencies themselves. There is no assurance that the rating mentioned above will remain in effect for any given period of time or that it might not be lowered or withdrawn entirely by the rating agency, if in its judgment circumstances so warrant. The Borrower and the Underwriter have undertaken no responsibility either to bring to the attention of the Holders of the Bonds any proposed change in or withdrawal of any rating or to oppose any such proposed revision or withdrawal. Any such downward change in or withdrawal of any rating might have an adverse effect on the market price or marketability of the Bonds.

## **UNDERWRITING**

Cain Brothers & Company, LLC (the "Underwriter"), will purchase the Bonds pursuant to a purchase contract (the "Purchase Contract") to be entered into with the Authority and the Borrower. Pursuant to the Purchase Contract, the Underwriter will receive an underwriting fee of \$123,050. The Purchase Contract provides that the Underwriter will purchase all of the Bonds, if any are purchased, and contains the agreements of the Borrower to indemnify the Underwriter and the Authority against certain liabilities.

## **MISCELLANEOUS**

The foregoing and subsequent summaries and descriptions of provisions of the Bonds, the Indenture, the Loan Agreement and the Reimbursement Agreement, and all references to other materials not purporting to be quoted in full, are only brief outlines of some of the provisions thereof and do not purport to summarize or describe all of the provisions thereof, and reference is made to said documents for full and complete statements of their provisions. The appendices attached hereto are a part of this Official Statement. Copies, in reasonable quantity, of the Indenture, the Loan Agreement and the Reimbursement Agreement may be obtained during the offering period upon request directed to Cain Brothers & Company, LLC, 601 California Street, Suite 1505, San Francisco, California 94108.

The execution and delivery of this Official Statement by the Authority has been duly authorized by the Authority and the execution and delivery of this Official Statement by the Borrower has been duly authorized by the Borrower. This Official Statement is not to be considered as a contract or agreement between the Authority and the purchasers or Holders of any of the Bonds.

ABAG FINANCE AUTHORITY FOR NONPROFIT  
CORPORATIONS

By: /s/ Joseph Chan  
Chief Financial Officer

Approved:

OUR LADY OF FATIMA VILLA

By: /s/ Bella Mahoney  
Authorized Representative

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## APPENDIX A

### DEFINITIONS AND SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL DOCUMENTS

The following is a summary of certain provisions of the Indenture, dated as of May 1, 2006, (the “Indenture”), between the ABAG Finance Authority for Nonprofit Corporations (the “Authority”) and Wells Fargo Bank, National Association, as trustee (the “Trustee”), and the Loan Agreement, dated as of May 1, 2006 (the “Loan Agreement”), between the Authority and Our Lady of Fatima Villa, Inc. (the “Borrower”). Such summary does not purport to be complete or definitive, is supplemental to the summary of other provisions of the Indenture and the Loan Agreement contained elsewhere in this Official Statement, and is qualified in its entirety by reference to the full terms of the Indenture and the Loan Agreement. All capitalized terms used and not otherwise defined in this Official Statement shall have the meanings assigned to such terms in the Indenture.

#### DEFINITIONS OF CERTAIN TERMS

**Accountant** means any firm of independent certified public accountants selected by the Borrower.

**Act** means the Joint Exercise of Powers Act, constituting Articles 1 through 4 of Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the Government Code of the State.

**Act of Bankruptcy** means with respect to any entity: (i) the entry of an order or decree, by a court having jurisdiction in the premises, for relief against such entity in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect which remains not discharged, bonded or stayed for at least ninety (90) days, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) for a substantial part of such entity’s property which remains not discharged, bonded or stayed for at least ninety (90) days, or ordering the winding up or liquidation of such entity’s affairs; or (ii) the institution or commencement by such entity of a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect; or (iii) the consent by such entity to the entry of an order for relief against it in any involuntary case under any such law, or to the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) for a substantial part of such entity’s property; or (iv) the making by such entity of a general assignment of substantially all of its assets for the benefit of creditors.

**Additional Payments** means the payments so designated and required to be made by the Borrower pursuant to the Loan Agreement described below under the caption “The Loan Agreement - Loan of Bond Proceeds - Additional Payments.”

**Alternate Letter of Credit** means an irrevocable letter of credit authorizing drawings thereunder by the Trustee, issued by a national banking association, a branch of a foreign bank, a bank, a trust company or other financial institution, and satisfying the requirements of the Indenture.

**Authority** means the ABAG Finance Authority for Nonprofit Corporations, a joint exercise of powers authority organized and existing under the laws of the State or its successors and assigns.

**Authorized Denomination** means (a) prior to the Conversion Date, denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof, and (b) on or after the Conversion Date, denominations of \$5,000 or any integral multiple thereof.

**Authorized Representative** means with respect to the Borrower, the chief executive officer, the chief financial officer or any other person who may be designated to act on behalf of the Borrower by a written certificate signed by the chief executive officer or the chief financial officer of the Borrower, furnished to the Trustee, the Bank and the Authority, containing the specimen signature of each such person; and with respect to the Authority, the Chair, the Vice Chair, the Chief Financial Officer, the Secretary of the Authority or any person who may be designated to act on behalf of the Authority by a written certificate signed by the Chair, the Vice Chair, the Chief Financial Officer, or the Secretary of the Authority, furnished to the Trustee and the Borrower, containing the specimen signature of each such person.

**Available Moneys** means: (a) funds received by the Trustee pursuant to the Letter of Credit; (b) moneys which have been continuously on deposit with the Trustee (i) held in any separate and segregated fund, account or subaccount established under the Indenture in which no other moneys which are not Available Moneys are held, and (ii) which have so been on deposit with the Trustee for at least one hundred twenty-three (123) consecutive days from their receipt by the Trustee and not commingled with any moneys so held for less than said period and during and prior to which period, and as of the date of the application thereof to the payment of Bonds, no Act of Bankruptcy of the Borrower or the Authority has occurred; (c) proceeds from the issuance and sale or remarketing of bonds, notes or other evidences of indebtedness received by the Trustee directly and contemporaneously with the issuance and sale or remarketing of such bonds, notes or other evidences of indebtedness; (d) any other moneys if there is delivered to the Trustee at the time such moneys are deposited with the Trustee an opinion of counsel (which may assume that no Holder of Bonds is an “insider” within the meaning of the Bankruptcy Code) from a firm experienced in Bankruptcy matters to the effect that the use of such moneys to pay amounts due on the Bonds would not be recoverable from Holders pursuant to Section 550 of the Bankruptcy Code as avoidable preferential payments under Section 547 of the Bankruptcy Code in the event of the occurrence of an Act of Bankruptcy of the Borrower or the Authority; or (e) proceeds of the investment of funds qualifying as Available Moneys under the foregoing clauses.

**Bank** means initially KBC Bank N.V., acting through its New York Branch, in its capacity as the issuer of the initial Letter of Credit, its successors in such capacity and their assigns, and, upon the acceptance of any Alternate Letter of Credit by the Trustee, the issuer of such Alternate Letter of Credit, its successors in such capacity and their assigns.

**Bankruptcy Code** means Title 11 of the United States Code, as amended.

**Beneficial Holders** means, when the Bonds are held in a book-entry only system, the owner of a Bond or portion thereof for federal income tax purposes.

**Bond or Bonds** means the ABAG Finance Authority for Nonprofit Corporations Revenue Bonds (Our Lady of Fatima Villa), Series 2006, authorized by, and at any time Outstanding pursuant to, the Indenture.

**Bond Counsel** means any attorney at law or firm of attorneys of nationally recognized standing in matters pertaining to the federal tax exemption of interest on bonds issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America, but shall not include counsel for the Borrower.

**Bond Fund** means the fund by that name established pursuant to the Indenture.

**Borrower** means Our Lady of Fatima Villa, Inc., a nonprofit public benefit corporation duly organized and existing under the laws of the State or any entity which is the surviving, resulting or transferee entity in any merger, consolidation or transfer of assets permitted under the Loan Agreement.

**Borrower Bonds** means Bonds registered in the name of the Borrower, or beneficial interests in the Bonds owned by the Borrower that are not Pledged Bonds.

**Borrower Documents** means the Loan Agreement, the Tax Certificate and all other documents and instruments executed by the Borrower in connection with the Bonds and the transactions relating to the Bonds.

**Business Day** means any day other than (i) a Saturday or Sunday, (ii) a day on which commercial banks in New York, New York, or the city or cities in which the Corporate Trust Office of the Trustee or the principal office of the Tender Agent or the office of the Bank at which demands for payment under its Letter of Credit are to be presented are authorized or required by law to close or (iii) a day on which the New York Stock Exchange is closed.

**Certificate, Order, Request, Requisition or Statement** of the Authority or the Borrower mean, respectively, a written certificate, statement, request, requisition or order signed in the name of the Authority by an

Authorized Representative of the Authority, or in the name of the Borrower by an Authorized Representative of the Borrower.

**Code** means the Internal Revenue Code of 1986, as amended and supplemented from time to time.

**Computation Date** means the date on which the Remarketing Agent determines the Fixed Rate, which shall be a Business Day not more than twenty (20) Business Days nor less than five (5) Business Days prior to the Conversion Date.

**Conversion Date** means the Business Day on which the Fixed Rate on the Bonds shall be effective pursuant to the Indenture.

**Corporate Trust Office** means, with respect to the Trustee, the corporate trust office of the Trustee in San Francisco, California, or such other office designated by the Trustee from time to time.

**Costs of Issuance** means all items of expense directly or indirectly payable by or reimbursable to the Authority or the Borrower and related to the authorization, issuance, sale and delivery of Bonds, including but not limited to costs of preparation and reproduction of documents, fees and expenses of the Authority, printing expenses, filing and recording fees, initial fees and charges of the Trustee, legal fees and charges, fees and disbursements of consultants and professionals, including fees and charges of counsel to the Authority, the Trustee, the Bank and Bond Counsel, rating agency fees, fees and charges for preparation, execution and safekeeping of the Bonds and any other cost, charge or fee in connection with the original issuance of the Bonds.

**Costs of Issuance Fund** means a fund by that name established pursuant to the Indenture.

**Debt Service Reserve Fund** means the fund by that name established pursuant to the Indenture.

**Depository** means any securities depository that is a clearing agency under federal law operating and maintaining, with its participants or otherwise, a book entry system to record ownership of book entry interests in Bonds in book entry form, the use of which will not impair the federal tax exemption of interest on the Bonds, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

**Environmental Regulation** means any federal, state or local law, statute, code, ordinance, regulation, requirement or rule relating to dangerous, toxic or hazardous pollutants, Hazardous Substances, chemical waste, materials or substances.

**Event of Default** means any of the events specified as such in the Indenture and described below under the caption "The Indenture - Events of Default and Remedies of Bondholders."

**Facilities** means the assisted living and skilled nursing facilities of the Borrower located at 20400 Saratoga-Los Gatos Road, Saratoga, California.

**Favorable Opinion of Bond Counsel** means an opinion of Bond Counsel addressed to the Authority and the Trustee to the effect that the action proposed to be taken is not prohibited by the laws of the State or this Indenture and will not result in the inclusion of interest on the Bonds in gross income for federal income tax purposes.

**Fiscal Year** means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other twelve-month, or fifty-two week, period hereafter selected and designated as the official fiscal year period of the Borrower.

**Fixed Rate** means the interest rate on each Bond during the Fixed Rate Period established pursuant to the Indenture.

**Fixed Rate Period** means the period from and including the Conversion Date to and including the date of payment in full of the Bonds.

**Hazardous Substances** means: (a) any oil, flammable substance, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which (i) pose a hazard to the Facilities or to persons on or about the Facilities or (ii) cause the Facilities to be in violation of any Environmental Regulation; (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls, or radon gas; (c) any chemical, material or substance defined as or included in the definition of “waste,” “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous waste,” “restricted hazardous waste,” or “toxic substances” or words of similar import under any Environmental Regulation, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 USC §§ 9601 et seq.; the Resource Conservation and Recovery Act (“RCRA”), 42 USC §§ 6901 et seq.; the Hazardous Materials Transportation Act, 49 USC §§ 1801 et seq.; the Federal Water Pollution Control Act, 33 USC §§ 1251 et seq.; the California Hazardous Waste Control Law (“HWCL”), Cal. Health & Safety §§ 25100 et seq.; the Hazardous Substance Account Act (“HSAA”), Cal. Health & Safety Code §§ 25300 et seq.; the Underground Storage of Hazardous Substances Act, Cal. Health & Safety §§ 25280 et seq.; the Porter-Cologne Water Quality Control Act (the “Porter-Cologne Act”), Cal. Water Code §§ 13000 et seq., the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); and Title 22 of the California Code of Regulations, Division 4, Chapter 30; (d) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or agency or may or could pose a hazard to the health and safety of the occupants of the Facilities or the owners and/or occupants of property adjacent to or surrounding the Facilities, or any other person coming upon the Facilities or adjacent property; or (e) any other chemical, materials or substance which may or could pose a hazard to the environment.

**Holder**, whenever used with respect to a Bond, means the person in whose name such Bond is registered.

**Indenture** means the Indenture, dated as of May 1, 2006, between the Authority and the Trustee, as originally executed or as it may from time to time be supplemented, modified or amended by any Supplemental Indenture.

**Interest Payment Date** means: (i) during the Variable Rate Period, the first Business Day of each month, commencing June 1, 2006, (ii) the Conversion Date, and (iii) following the Conversion Date, each June 1 and December 1.

**Investment Securities** means any of the following:

(1) direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America) or obligations the timely payment of the principal of and interest on which are fully guaranteed by the United States of America;

(2) obligations, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following: Federal Home Loan Bank System, Export-Import Bank of the United States, Federal Financing Bank, Government National Mortgage Association, Farmer’s Home Administration, Federal Home Loan Mortgage Corporation or Federal Housing Administration; or by any agency, department or instrumentality of the United States if such obligations are rated in one of the two highest rating categories (without regard to gradations within such category) of each Rating Agency then rating the Bonds;

(3) obligations of, or obligations fully guaranteed by, any state of the United States of America, or political subdivision, agency, instrumentality or authority thereof which obligations, at the time of purchase, are rated by at least one nationally recognized rating agency in one of its three highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) assigned by such rating agency to obligations of that nature;

(4) bonds of the State of California or of any other state or commonwealth of the United States or of any county, city and county or city of the State of California or of any other state or commonwealth of the United States or corporate bonds, in each case, rated in one of the two highest rating categories (without regard to gradations within such category) of each Rating Agency then rating the Bonds;

(5) commercial paper of finance companies and banking institutions rated in one of the two highest rating categories (without regard to gradations within such category) of each Rating Agency then rating the Bonds;

(6) repurchase agreements fully secured by collateral security, as evidenced by an Opinion of Counsel, described in clauses (1) or (2) of this definition, which collateral (a) is held by the Trustee or a third party agent during the term of such repurchase agreement, (b) is not, pursuant to the terms of such agreement, subject to liens or claims of third parties, and (c) has a market value (determined at least once every fourteen (14) days) at least equal to the amount so invested;

(7) long-term investment agreements (with maturity dates in excess of one (1) year) with financial institutions (including, without limitation, banks and insurance companies) the debt obligations or long-term claims paying ability of such financial institutions or of a related guarantor of any such financial institution are rated in one of the two highest rating categories (without regard to gradations within such category) of each Rating Agency then rating the Bonds, or short-term investment agreements with financial institutions or any related guarantor of any such financial institution the long- or short-term debt obligations of which are rated in one of the two highest long- or short-term, as the case may be, rating categories (without regard to gradations within such category) of each Rating Agency then rating the Bonds, provided that if such rating falls below the two highest rating categories, the investment agreement shall permit assignment of such investment agreement to a financial institution which meets the ratings requirement specified in this clause (7) or shall provide for the invested securities to be fully collateralized by investments described in clause (1) of this definition and, provided further, that if so collateralized, that the Trustee has a perfected first security lien on the collateral, as evidenced by an Opinion of Counsel, and such collateral is held by the Trustee;

(8) banker's acceptances or certificates of deposit of, or time deposits in, any bank (including the Trustee or any of its affiliates) or savings and loan association (a) the debt obligations of which (or in the case of the principal bank of a bank holding company, the debt obligations of the bank holding company of which) are rated in one of the two highest rating categories (without regard to gradations within such category) of each Rating Agency then rating the Bonds or (b) which certificates of deposit or time deposits are fully insured by the Federal Deposit Insurance Corporation or (c) which certificates of deposit or time deposits are secured at all times, in the manner and to the extent provided by law, by collateral security (described in clauses (1) or (2) of this definition) with a market value (valued at least quarterly) of no less than the original amount of moneys so invested;

(9) money market instruments rated in the highest rating category by either Moody's or S&P and/or money market instruments restricted to investments described in clause (1), (2) and (6) of this definition, including in each case any money market instruments for which the Trustee or any of its affiliates provides investment advisory or management services;

(10) Tax-Exempt obligations and money market mutual funds whose portfolios are restricted to such obligations, which obligations or mutual funds are rated in one of the two highest rating categories (without regard to gradations within such category) by each Rating Agency then rating the Bonds;

(11) Tax-Exempt obligations, the timely payment of the principal of and interest on which is fully provided for by the deposit in trust or escrow of cash or obligations described in clause (1) of this definition; and

(12) forward agreements with respect to obligations listed in clauses (1), (2), (3), (4), or (5) of this definition with any financial institution which (or the guarantor of which) has a long-term debt, claims paying ability or financial program strength ratings in one of the three highest rating categories (without regard to gradations within such category) assigned by at least one nationally recognized rating agency, which forward agreement provides that the financial institution entering into such forward agreement with the Trustee has a continual obligation to deliver or purchase the obligations at an agreed upon price or yield.

**Issue Date** means the date on which the Bonds are delivered to the purchaser or purchasers thereof upon original issuance.

**Kenosha** means the Dominican Sisters of St. Catherine of Siena, Kenosha, Wisconsin, a Wisconsin not-for-profit corporation.

**Letter of Credit** means a letter of credit satisfying the requirements of the Indenture, including any extensions or amendments thereto, and including any Alternate Letter of Credit delivered pursuant to the Indenture.

**Letter of Credit Account** means the account by that name in the Bond Fund established pursuant to the Indenture.

**Liquidity Drawing** means a drawing under the Letter of Credit in accordance with the terms thereof to pay the Purchase Price of tendered Bonds which are not remarketed by the Remarketing Agent in accordance with the Remarketing Agreement and the Indenture.

**Loan Agreement** means that certain loan agreement, dated as of May 1, 2006, between the Authority and the Borrower, as originally executed and as it may from time to time be supplemented, modified or amended in accordance with the terms thereof and of the Indenture.

**Loan Default Event** means any one or more of the events specified as such in the Loan Agreement and described below under the caption “The Loan Agreement - Loan Default Events and Remedies.”

**Loan Repayments** means the payments so designated and required to be made by the Borrower pursuant to the Loan Agreement and described below under the caption “The Loan Agreement - Loan of Bond Proceeds - Repayment Provisions.”

**Moody’s** means Moody’s Investors Service, a corporation organized and existing under the laws of the State of Delaware, its successors and their assigns, or, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Borrower, by notice to the Authority, the Bank, the Remarketing Agent and the Trustee.

**Opinion of Counsel** means a written opinion of counsel (who may be counsel for the Authority) acceptable to the Authority and the Borrower.

**Outstanding** means when used as of any particular time with reference to Bonds, means all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under the Indenture except: (1) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (2) Bonds with respect to which liability of the Authority shall have been discharged in accordance with the provisions of the Indenture; and (3) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to the Indenture.

**Participant or Participants** means securities brokers and dealers, banks, trust companies and clearing corporations which participate in the Depository with respect to the Bonds.

**Person** means an individual, corporation, firm, association, limited liability company, partnership, trust, or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

**Pledged Bonds** means, at the time of determination thereof, any Bonds or beneficial interests in Bonds pledged or assigned to or otherwise held for the benefit of the Bank as a result of a payment under its Letter of Credit of the Purchase Price of Bonds pursuant to the Indenture.

**Project** means the financing and refinancing of the acquisition, construction, improvement and equipping of the Facilities, including the payment of all amounts due and owing Comerica Bank under that certain Building Loan Agreement, dated October 8, 2002, between Comerica Bank and the Borrower.

**Project Fund** means the fund by that name established pursuant to the Indenture.

**Proposed Conversion Date** means any date designated by the Borrower as the Conversion Date in accordance with the Indenture.

**Purchase Fund** means the fund by that name created by the Indenture.

**Purchase Price** means 100% of the principal amount of any Bond (or portions thereof in Authorized Denominations) tendered or required to be tendered pursuant to the provisions of the Indenture, plus, when applicable, accrued and unpaid interest thereon to the date of purchase.

**Rating Agency** means Moody's and/or S&P, according to which of such rating agencies then rates the Bonds; and provided that if neither of such rating agencies then rates the Bonds, the term "Rating Agency" shall be deemed to refer to any nationally recognized securities rating agency.

**Rebate Fund** means the fund by that name created pursuant to the Indenture.

**Rebate Requirement** means any amount required by a Tax Certificate to be paid to the United States government.

**Record Date** means with respect to each Interest Payment Date (i) on and prior to the Conversion Date, the Trustee's close of business on the Business Day next preceding such Interest Payment Date, and (ii) after the Conversion Date, the Trustee's close of business on the fifteenth day of the calendar month next preceding such Interest Payment Date, regardless of whether such day is a Business Day.

**Reimbursement Agreement** means with respect to each Letter of Credit, the agreement pursuant to which such Letter of Credit is issued, including all amendments thereof and supplements thereto, and initially shall mean the Reimbursement Agreement, dated as of May 1, 2006, between the Borrower and KBC Bank N.V., acting through its New York Branch, as the same may be amended or supplemented from time to time.

**Remarketing Agent** means the Remarketing Agent appointed and serving in such capacity under the Indenture and any successors thereto. The initial Remarketing Agent shall be Cain Brothers & Company, LLC.

**Remarketing Agreement** means the Remarketing Agreement dated as of May 1, 2006, between the Borrower and the Remarketing Agent, as from time to time supplemented and amended, and, unless the context or use indicates another or different meaning or intent, any remarketing agreement between the Borrower and the Remarketing Agent, as from time to time supplemented and amended, which provides that it is a Remarketing Agreement for purposes of this Indenture.

**Reserved Rights** means those certain rights of the Authority under the Loan Agreement to indemnification and to payment or reimbursement of fees and expenses of the Authority, its right to enforce the Loan Agreement pursuant to the terms thereof, its right to inspect and audit the books, records and premises of the Borrower, including the Project, its right to collect attorneys' fees and related expenses, its right to enforce the Borrower's covenant to comply with applicable federal tax law and State law (including the Act and the rules of the Authority, if any), its right to receive notices and to grant or withhold consents or waivers under the Loan Agreement and the Indenture, and its right to amend the Indenture and the Loan Agreement in accordance with the provisions of the Indenture and the Loan Agreement.

**Revenue Account** means the account by that name in the Bond Fund established pursuant to the Indenture.

**Revenues** means all amounts received by the Authority or the Trustee for the account of the Authority pursuant or with respect to the Loan Agreement or the Letter of Credit (other than payments of the Purchase Price of any Bonds), including, without limiting the generality of the foregoing, Loan Repayments (including both timely and delinquent payments, any late charges, and paid from whatever source), prepayments, insurance proceeds, condemnation proceeds, and all interest, profits or other income derived from the investment of amounts in the funds and accounts established pursuant to the Indenture, but not including Additional Payments, or any moneys paid for deposit into the Rebate Fund or for the purchase of Bonds.

**Rule 15c2-12** means Securities and Exchange Commission Rule 15c2-12, as supplemented and amended from time to time.

**S&P** means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., its successors and their assigns, and, if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating designated by the Borrower, by notice to the Authority, the Bank, the Remarketing Agent and the Trustee.

**State** means the State of California.

**Stated Expiration Date** means the date (as such date may be extended from time to time) on which the Letter of Credit is stated to expire or terminate in accordance with its terms other than by virtue of the replacement of such Letter of Credit with an Alternate Letter of Credit in accordance with the terms of the Indenture.

**Supplemental Indenture** means any indenture hereafter duly authorized and entered into between the Authority and the Trustee, supplementing, modifying or amending the Indenture; but only if and to the extent that such Supplemental Indenture is specifically authorized under the Indenture.

**Support Agreement** means that certain Support Agreement by and between Kenosha and the Borrower entered into in connection with the issuance by the Bank of its Letter of Credit.

**Tax Certificate** means the Tax Certificate and Agreement of the Borrower and the Authority dated the Issue Date of the Bonds.

**Tender Agent** means the Tender Agent, if any (or its successors to its interests) appointed in accordance with the Indenture. "Principal Office" of the Tender Agent means the office thereof designated by the Tender Agent in writing to the Authority, the Trustee, the Bank, the Remarketing Agent and the Borrower.

**Trustee** means Wells Fargo Bank, National Association, or its successor as Trustee thereunder as provided in the Indenture.

**Variable Rate** means the interest rate on each Bond during the Variable Rate Period established pursuant to the Indenture.

**Variable Rate Period** means the period from and including the Issue Date to the earlier of (i) the Conversion Date or (ii) the day of payment in full of the Bonds.

## **THE INDENTURE**

The Indenture sets forth the terms of the Bonds, the nature and extent of security, various rights of the Holders and beneficial owners of the Bonds, rights, duties and immunities of the Trustee and the rights and obligations of the Authority. The summary of the provisions of the Indenture set forth below does not purport to be complete or definitive, is supplemental to the summary of other provisions of the Indenture set forth elsewhere in this Official Statement, and is qualified in its entirety by reference to the full terms of the Indenture.

## **Pledge and Assignment; Bond Fund**

**Pledge and Assignment.** Subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture, all of the Revenues and any other amounts (including proceeds of the sale of Bonds) held in any fund or account established pursuant to the Indenture (except the Rebate Fund and funds held to pay the Purchase Price of any Bonds) are pledged to secure the full payment of the principal of, premium, if any, and interest on the Bonds in accordance with their terms and the provisions of the Indenture and thereafter to secure full payment of amounts owed under any Reimbursement Agreement. Said pledge shall constitute a lien on and security interest in such assets and shall attach, be perfected and be valid and binding from and after delivery by the Trustee of the Bonds under the Indenture, without any physical delivery thereof or further act.

Pursuant to the provisions of the Indenture, the Authority transfers in trust, and assigns to the Trustee, for the benefit of the Holders from time to time of the Bonds and the Bank, to the extent of its interest therein, all of the Revenues and other assets pledged pursuant to the provisions of the Indenture described in the paragraph above and all of the right, title and interest of the Authority in the Loan Agreement (except for its Reserved Rights). The Trustee shall be entitled to and shall collect and receive all of the Revenues, and any Revenues collected or received by the Authority shall be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee and shall forthwith be paid by the Authority to the Trustee. The Trustee also shall be entitled to and, subject to the provisions of the Indenture, shall take all steps, actions and proceedings reasonably necessary in its judgment to enforce, either jointly with the Authority or separately, all of the rights of the Authority and all of the obligations of the Borrower under the Loan Agreement.

**Bond Fund.** The Indenture creates and establishes with the Trustee a special fund designated the “Bond Fund.” Within the Bond Fund there shall be established separate trust accounts designated the “Revenue Account” and the “Letter of Credit Account” provided, however, no such account is required to be established and opened by the Trustee until such time as the account is needed under the provisions of the Indenture. All amounts drawn by the Trustee under the Letter of Credit (other than amounts drawn to pay the Purchase Price of a tendered Bond) shall be deposited in the Letter of Credit Account of the Bond Fund and shall not be commingled with any other moneys held by the Trustee. Any other amounts received for deposit in the Bond Fund shall be deposited in the Revenue Account of the Bond Fund and shall not be commingled with any other moneys held by the Trustee.

There shall be deposited in the Bond Fund (a) any accrued interest received on the sale of the Bonds; (b) all Loan Repayments under the Loan Agreement; (c) all moneys received by the Trustee under the Loan Agreement for deposit in the Bond Fund; (d) all moneys drawn under the Letter of Credit (other than amounts drawn to pay the Purchase Price of a tendered Bond) to pay principal of, premium, if any, or interest on the Bonds; and (e) any other moneys received by the Trustee with directions for deposit in the Bond Fund.

Pursuant to the Indenture, the Authority authorizes and directs the Trustee, and the Trustee agrees, to withdraw sufficient funds from the Bond Fund to pay the principal of and premium, if any, and interest on the Bonds as the same become due and payable.

Prior to 12:00 noon, New York City time, on the Business Day immediately preceding the date on which any principal and/or interest shall become due on the Bonds (whether upon any Interest Payment Date, at maturity, upon the date fixed for redemption or upon acceleration of the Bonds), the Trustee shall, without making any prior claim or demand upon the Borrower, draw on the Letter of Credit an amount sufficient for the purpose of paying the principal, premium, if any, and interest coming due and payable on the Bonds, provided, that the Trustee shall not take any action under the Letter of Credit to pay the principal of, premium, if any, and interest on any Pledged Bonds or Borrower Bonds.

If for any reason funds are not available under the Letter of Credit for payment of principal of, premium or interest due on the Bonds on any such date, the Trustee shall immediately request from the Borrower funds sufficient to make all such payments of principal and/or interest and premium, if any, on the Bonds pursuant to the Loan Agreement by directing that the Borrower deposit such funds with the Trustee at its designated corporate trust office into the Revenue Account of the Bond Fund within such time as to allow the Trustee to make timely withdrawals from the Bond Fund in accordance with the Indenture.

## **Remarketing of Tendered Bonds; Payment of Purchase Price**

**Remarketing.** Subject to the provisions of the Indenture, the Remarketing Agent shall use its best efforts to remarket (i) optionally tendered Bonds or beneficial interests in Bonds, of which it has received notice of tender from the Tender Agent pursuant to the Indenture, or (ii) mandatory tendered beneficial interests in Bonds (if the Bonds are held in a book-entry only system) or Bonds (if the Bonds are no longer held in a book-entry only system), in each case at a price equal to 100% of the principal amount thereof plus accrued interest to the purchase date. The Remarketing Agent agrees that it shall not sell any Bonds purchased pursuant to the tender provisions of the Indenture to the Borrower, or to the Authority, or to any person who controls, is controlled by, or is under common control with the Borrower or the Authority or any guarantor of the Borrower's obligations under the Loan Agreement or the Reimbursement Agreement.

**Tenders During Variable Rate Period.** By 3:00 p.m., New York City time, on the Business Day next preceding each purchase date (whether optional or mandatory) during the Variable Rate Period, the Remarketing Agent shall give notice to the Trustee of the principal amount of such Bonds (or beneficial interests therein) remarketed, and, if the Bonds are no longer held in a book-entry only system, the names, addresses and taxpayer identification numbers of the purchasers and the denominations in which the Bonds are to be issued to each purchaser. If less than all of the Bonds (or beneficial interests therein) to be tendered on such purchase date have been remarketed, the Remarketing Agent shall, in addition, notify the Trustee by 3:00 p.m., New York City time, on the Business Day next preceding the purchase date (whether optional or mandatory), of the principal amount of Bonds (or beneficial interests therein) which have not been remarketed and the amount of accrued interest to be paid on such Bonds (or beneficial interests therein) on such purchase date. Upon receipt of such notices from the Remarketing Agent, the Trustee shall immediately cause the same information contained in such notices to be delivered to the Tender Agent, the Borrower and the Bank. Purchasers of Bonds (or beneficial interests therein) which have been remarketed shall be required to deliver the Purchase Price thereof directly to the Tender Agent by not later than 10:00 a.m., New York City time, on each purchase date (whether optional or mandatory). By 10:30 a.m., New York City time, on each purchase date (whether optional or mandatory), the Tender Agent shall notify in writing the Trustee and the Remarketing Agent of any Bonds (or beneficial interests therein) which have been remarketed for which payment has not been received. Upon receipt of such notice from the Tender Agent, the Trustee shall immediately cause the same information contained in such notice to be delivered to the Borrower and the Bank. If the Trustee does not receive notice from the Remarketing Agent by 3:00 p.m., New York City time, on the Business Day next preceding the purchase date of the principal amount of Bonds (or beneficial interests therein) that have not been remarketed, for purposes of making draws upon the Letter of Credit pursuant to the Indenture, the Trustee shall assume, until notified otherwise as described in this paragraph, that none of the Bonds (or beneficial interests therein) tendered or required to be tendered for purchase on such date have been remarketed. If the Trustee does not receive such notice from the Tender Agent by 10:30 a.m., New York City time, on a purchase date of the principal amount of Bonds (or beneficial interests therein) which have been remarketed for which payment has been received, for purposes of making draws upon the Letter of Credit pursuant to the Indenture, the Trustee shall assume, until notified otherwise, that payment has not been received for those Bonds that were remarketed. Before making the assumptions referred to in the immediately preceding two sentences, the Trustee shall use its best efforts to contact the Remarketing Agent and Tender Agent to determine whether such assumptions are correct.

**Draws Upon Letter of Credit; Borrower Moneys.** With respect to any Bonds then secured by a Letter of Credit, prior to 11:00 a.m., New York City time, on each purchase date (whether optional or mandatory) the Trustee shall, upon receipt of the notices described above (or based upon the assumptions described above) draw upon the Letter of Credit in an amount equal to the Purchase Price of (i) any tendered Bonds (or beneficial interests therein) not remarketed and (ii) any tendered Bonds (or beneficial interests therein) remarketed and for which payment has not been received and shall transfer the funds so drawn to the Tender Agent. In the event that the Bank does not cause funds so drawn to be deposited with the Trustee by 2:15 p.m., New York City time, on each purchase date (whether optional or mandatory), the Trustee shall transfer to the Tender Agent moneys deposited by the Borrower pursuant to the Loan Agreement in an amount sufficient to pay the Purchase Price of (i) any tendered Bonds (or beneficial interests therein) not remarketed and (ii) any tendered Bonds (or beneficial interests therein) remarketed and for which payment has not been received. The Tender Agent shall deposit such moneys of the Borrower in a separate account, apart from, and not commingled with, any other moneys held by the Tender Agent. The Trustee will notify the Holders of any continuing failure by the Bank to honor a properly presented draw request for payment of the Purchase Price for any Bonds optionally or mandatory tendered for purchase. No draws shall be

made under a Letter of Credit for the payment of Purchase Price with respect to Pledged Bonds or Borrower Bonds. Any drawing on a Letter of Credit to pay the Purchase Price of any tendered Bonds in connection with a mandatory tender due to substitution of an Alternate Letter of Credit for the Letter of Credit then in effect shall be made by drawing on the existing Letter of Credit securing the Bonds which is to be replaced by an Alternate Letter of Credit. In the event of a drawing as described in the preceding sentence, the Trustee may not accept the Alternate Letter of Credit and surrender the Letter of Credit then in effect for cancellation until the Bank has honored such drawing. In the event of a drawing on the Letter of Credit to pay the Purchase Price of any tendered Bonds in connection with a mandatory tender on a Proposed Conversion Date, the Trustee shall not surrender the Letter of Credit for cancellation until the Bank has honored such drawing.

**Funds for Purchase Price Held by Tender Agent.** The Tender Agent shall establish a special trust fund designated as the "Purchase Fund." The Tender Agent shall hold all Bonds delivered to it in trust for the benefit of the respective Holders of Bonds delivering such Bonds until moneys representing the Purchase Price of such Bonds have been delivered to or for the account of such Holders of Bonds. The Tender Agent shall hold all moneys delivered to it for the purchase of Bonds in the Purchase Fund in trust and without investment, solely for the benefit of the persons delivering such moneys, until the Bonds purchased with such moneys have been delivered to or for the account of the persons purchasing such Bonds. The Tender Agent shall withdraw sufficient funds from the Purchase Fund to pay the Purchase Price of Bonds tendered for purchase as the same becomes due and payable.

**Limitations on Remarketing.** Anything in this Indenture to the contrary notwithstanding, there shall be no obligation of the Remarketing Agent to remarket Bonds (or beneficial interests therein) (i) if there shall have occurred and be continuing an Event of Default under the Indenture, (ii) if there is no Letter of Credit in effect that secures Bonds (or beneficial interests therein) in the Variable Rate Period, (iii) upon a conversion to a Fixed Rate Period, or (iv) if any other condition precedent to the obligation of the Remarketing Agent to remarket Bonds as set forth in the Remarketing Agreement has not been satisfied. In the event Bonds (or beneficial interests therein) are required to be tendered for purchase on the last Interest Payment Date prior to the Stated Expiration Date of the Letter of Credit as described in the Indenture, such Bonds (or beneficial interests therein) shall not be remarketed unless and until the term of the then existing Letter of Credit has been extended or renewed or an effective Alternate Letter of Credit has been delivered to the Trustee. In no event shall Bonds (or beneficial interests therein) be remarketed unless the Bank has reinstated, or will simultaneously reinstate, the amount available to be drawn under the Letter of Credit to an amount sufficient to pay principal of, interest on and Purchase Price for such Bonds (or beneficial interests therein).

**Payment of Purchase Price of Bonds.** On the date Bonds (or beneficial interests therein) are to be purchased pursuant to the provisions of the Indenture, the Tender Agent shall deliver the Purchase Price to the tendering Holder (or the tendering beneficial owner) only from the funds listed below, in the order of priority indicated:

(i) the proceeds of the sale of such Bonds (or beneficial interests therein) which have been remarketed by the Remarketing Agent to any person other than the Borrower, the Authority, any person who controls, is controlled by, or is under common control with the Borrower or the Authority, or any guarantor of the Borrower's obligations under the Loan Agreement or the Reimbursement Agreement, and delivered to the Tender Agent on the purchase date prior to the time such Bonds (or beneficial interests therein) are to be purchased;

(ii) moneys drawn under the Letter of Credit; and

(iii) moneys deposited by the Borrower with the Trustee pursuant to the Loan Agreement and transferred to the Tender Agent, which moneys shall be segregated by the Tender Agent in a separate account, apart from, and not commingled with, other moneys held by the Tender Agent.

#### **Other Funds and Accounts**

**Project Fund.** The Trustee shall establish, maintain and hold in trust a separate fund designated as the "Project Fund." The moneys in the Project Fund shall be used and withdrawn by the Trustee to pay the capital costs of the Project. No moneys in the Project Fund shall be used to pay Costs of Issuance or interest accruing on the Bonds.

**Costs of Issuance Fund.** The Trustee shall establish, maintain and hold in trust a separate fund designated as the “Costs of Issuance Fund”. The moneys in the Costs of Issuance Fund shall be used and withdrawn by the Trustee to pay the Costs of Issuance upon receipt by the Trustee of a Requisition of the Borrower in substantially the form attached as an exhibit to the Indenture, stating the Person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. On the one hundred eightieth (180) day following the initial issuance of the Bonds or upon the earlier Request of the Borrower, amounts, if any, remaining in the costs of Issuance Fund shall be transferred to the Project Fund.

**Rebate Fund.** The Trustee shall establish and maintain a fund separate from any other fund established and maintained under the Indenture designated as the “Rebate Fund.” Within the Rebate Fund, the Trustee shall maintain such other accounts as the Trustee shall be instructed to maintain by the Borrower in order to comply with the terms and requirements of the Tax Certificate. Subject to the transfer provisions set forth in the Indenture which are described below, all money at any time deposited in the Rebate Fund shall be held by the Trustee in trust, to the extent required to satisfy the Rebate Requirement, for payment to the federal government of the United States of America, and no other person shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by the provisions of the Indenture and by the Tax Certificate.

Upon the Borrower’s written direction, an amount shall be deposited to the Rebate Fund by the Trustee from deposits by the Borrower, or from available investment earnings on amounts (other than moneys representing the proceeds of a draw on the Letter of Credit or held in the Letter of Credit Account remarketing proceeds, Available Moneys, moneys being aged to become Available Moneys, or moneys held for the payment of particular Bonds (including moneys held for non-presented Bonds or for the purchase of Bonds or for defeased Bonds) held in the Bond Fund, if and to the extent required, so that the balance of the amount on deposit thereto shall be equal to the Rebate Requirement. Computations of the Rebate Requirement shall be furnished by or on behalf of the Borrower in accordance with the Tax Certificate.

The Trustee shall invest all amounts held in the Rebate Fund in Investment Securities as instructed in writing by the Borrower, and the Borrower shall be responsible for such instructions complying with the Tax Certificate. Money shall not be transferred from the Rebate Fund except as provided pursuant to the provisions of the Indenture described in the following paragraph.

Upon receipt of the Borrower’s written directions, the Trustee shall remit part or all of the balances in the Rebate Fund to the United States, as so directed. In addition, if the Borrower so directs, the Trustee will deposit moneys into or transfer moneys out of the Rebate Fund from or into such accounts or funds (other than moneys representing the proceeds of a draw on the Letter of Credit or held in the Letter of Credit Account, remarketing proceeds, or moneys held for the payment of particular Bonds, including moneys held for non-presented Bonds or for the purchase of Bonds or for defeased Bonds) as directed by the Borrower’s written directions. Any funds remaining in the Rebate Fund after redemption and payment of all of the Bonds and payment and satisfaction of any Rebate Requirement or provision made therefor shall be withdrawn and remitted to the Borrower upon the Borrower’s written request.

#### **Investment of Moneys in Funds and Accounts**

All moneys in any of the funds or accounts established pursuant to the Indenture (other than moneys in the Letter of Credit Account, remarketing proceeds, and moneys held for the purchase of Bonds or for non-presented Bonds which shall be held uninvested) shall be invested by the Trustee as directed in writing by the Borrower solely in Investment Securities. Notwithstanding any other provision in the Indenture, in the absence of written investment instructions from the Borrower, the Trustee is directed to invest available funds in Investment Securities described in clause (9) of the definition thereof. Moneys in all funds and accounts shall be invested in Investment Securities maturing not later than the date on which such moneys will be required for the purposes specified in the Indenture. Money invested in a repurchase agreement, investment agreement or forward agreement shall be deemed to mature on the date on which the Trustee may withdraw moneys under such agreement without penalty.

All interest, profits and other income received from the investment of moneys in the Project Fund, the Costs of Issuance Fund, the Debt Service Reserve Fund and the Rebate Fund shall be deposited when received in such fund. All interest, profits and other income received from the investment of moneys in any other fund or

account established pursuant to the Indenture shall be deposited in the Bond Fund. Notwithstanding anything to the contrary contained in this paragraph, an amount of interest received with respect to any Investment Security equal to the amount of accrued interest, if any, paid as part of the purchase price of such Investment Security shall be credited to the fund from which such accrued interest was paid. To the extent that any Investment Securities are registrable, such Investment Securities shall be registered in the name of the Trustee or its nominee for the benefit of the Holders.

For the purpose of determining the amount in any fund, all Investment Securities credited to such fund shall be valued at the lesser of cost or par value plus, prior to the first payment of interest following purchase, the amount of accrued interest, if any, paid as a part of the purchase price.

### **Particular Covenants**

**Tax Covenants.** The Authority and the Borrower shall at all times do and perform all acts and things permitted by law and the Indenture which are necessary or desirable in order to assure that interest paid on the Bonds (or any of them) will be excluded from gross income for federal income tax purposes and shall take no action that would result in such interest not being excluded from gross income for federal income tax purposes. Without limiting the generality of the foregoing, the Authority and the Borrower agree to comply with the provisions of the Tax Certificate. This covenant shall survive payment in full or defeasance of the Bonds

**Continuing Disclosure.** Pursuant to the provisions of the Loan Agreement described below under the caption “The Loan Agreement – Particular Covenants – Continuing Disclosure,” the Borrower has agreed to undertake any continuing disclosure requirements promulgated under Rule 15c2-12, as it may from time to time hereafter be amended or supplemented, and the Authority shall have no liability to the Holders of the Bonds or any other person with respect to such disclosure matters. Notwithstanding any other provision of the Indenture, failure of the Borrower to comply with the requirements of Rule 15c2-12, as it may from time to time hereafter be amended or supplemented, shall not be considered an Event of Default; however, the Trustee at the written request of any Holders or Beneficial Holders of at least 25% aggregate principal amount of Outstanding Bonds, shall, but only to the extent indemnified to its satisfaction from and against any cost, liability or expense related thereto, including, without limitation, reasonable fees and expenses of its attorneys and advisors and additional fees and expenses of the Trustee, or any Holder or Beneficial Holder of any Bonds may, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Borrower to comply with its obligations pursuant to the provisions of the Loan Agreement described below under the caption “The Loan Agreement – Particular Covenants – Continuing Disclosure.”

### **Events of Default and Remedies of Bondholders**

**Events of Default; Acceleration; Waiver of Default.** Each of the following events which has occurred and is continuing shall constitute an “Event of Default” under the Indenture:

(a) default in the due and punctual payment of the principal of, or premium (if any) on, any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption, by declaration or otherwise;

(b) default in the due and punctual payment of any installment of interest on any Bond, when and as the same shall become due and payable;

(c) default in the payment of the Purchase Price of any Bond required to be purchased under the Indenture when and as the same is due;

(d) failure by the Authority to perform or observe any other of the covenants, agreements or conditions on its part in the Indenture or in the Bonds contained, and the continuation of such failure for a period of thirty (30) days after written notice thereof, specifying such default and requiring the same to be remedied, shall have been given to the Authority, the Bank and the Borrower by the Trustee, or to the Authority, the Bank, the

Borrower and the Trustee by the Holders of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding;

(e) the Trustee receives a written notice from the Bank specifying the occurrence of an “event of default” under the Reimbursement Agreement and directing the Trustee to declare the principal of and interest on the Bonds immediately due and payable;

(f) receipt by the Trustee, not later than the last day provided for in the Letter of Credit on which the Bank can give notice preventing a reinstatement of the Letter of Credit following a drawing under the Letter of Credit to pay regularly scheduled interest on the Bonds, of written notice by the Bank that the Borrower has not reimbursed the Bank for such drawing or of the occurrence of an “event of default” under the Reimbursement Agreement, and, that as a consequence of either of the above, the Bank will not reinstate the Letter of Credit with respect to such drawing;

(g) the Bank shall wrongfully dishonor any draft or other request for payment under the Letter of Credit presented in strict accordance with its terms, the Letter of Credit shall, for any reason, become unavailable to or unenforceable by the Trustee, or the Bank (i) shall generally not pay its debts as they become due, (ii) shall admit in writing its inability to pay its debts generally, (iii) shall make a general assignment for the benefit of creditors, (iv) shall institute any proceeding or voluntary case (A) seeking to adjudicate it a bankrupt or insolvent or (B) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief or protection of debtors or (C) seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property, (v) shall take any action to authorize any of the actions described above in this subsection (g), or (vi) shall have instituted against it any proceeding (A) seeking to adjudicate it a bankrupt or insolvent or (B) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief or protection of debtors or (C) seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property, and, if each such proceeding is being contested by the Bank in good faith, each such proceeding shall remain undismissed or unstayed for a period of sixty (60) days, and the Borrower shall not have obtained an Alternate Letter of Credit within sixty (60) days after receipt of notice of each such occurrence; or

(h) a Loan Default Event.

Any default described in (d) above may be waived by the Trustee with the written consent of the Bank from time to time if the Authority (or the Borrower, on behalf of the Authority) is proceeding with all due diligence to cure such default and the Authority is not otherwise in default under the Indenture.

Upon the occurrence of any Event of Default under the Indenture, the Trustee may and upon (i) the written request of the holders of not less than twenty-five percent in aggregate principal amount of Bonds then Outstanding or (ii) the occurrence of an Event of Default described in (e), (f) or (g) above, the Trustee shall immediately, by notice in writing sent to the Authority, declare the principal of and any premium on all Bonds then Outstanding (if not then due and payable) and the interest accrued thereon to be due and payable immediately, and, upon such declaration, such principal and premium, if any, and interest shall become and be immediately due and payable. Interest on the Bonds shall cease to accrue on the date of such declaration; provided, however, that so long as a Letter of Credit is in effect and the Bank has not failed to honor a properly presented and conforming drawing thereunder, no acceleration, other than as provided in clause (i) of this paragraph, shall be declared under the Indenture by reason of a default described in (a), (b), (c), (d), (g) or (h) above without the prior written consent of the Bank. Upon any declaration of acceleration under the Indenture, the Trustee shall immediately exercise such rights as it may have under the Loan Agreement to declare all payments thereunder to be immediately due and payable and, to the extent it has not already done so and to the extent necessary, shall immediately draw upon the Letter of Credit as provided in the Indenture.

Immediately following any such declaration of acceleration, the Trustee shall mail notice of such declaration by first class mail to each holder of Bonds at his last address appearing on the Bond Register. Any defect in or failure to give such notice of such declaration shall not affect the validity of such declaration.

**Other Remedies; Rights of Holders.** Upon the happening and continuance of an Event of Default under the Indenture the Trustee may, but only with the prior written consent of the Bank (subject to the limitations of the Indenture), pursue any available remedy to enforce the performance of or compliance with any other obligation or requirement of the Indenture or the Loan Agreement.

**Right of Holders and Bank to Direct Proceedings.** Anything in this Indenture to the contrary notwithstanding, and subject to the rights of the Bank to direct proceedings as provided in the Indenture, the holders of a majority in aggregate principal amount of Bonds then Outstanding shall have the right at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or any other proceedings under the Indenture; provided, that such direction shall not be otherwise than in accordance with the provisions of law and of the Indenture, and provided that the Trustee shall be indemnified to its satisfaction. No Bondholder shall individually, or collectively except through the Trustee, have the right to present a draft to the Bank to collect amounts available under the Letter of Credit.

No Holder shall have the right to institute any proceeding for the enforcement of the Indenture unless such Holder has given the Trustee and the Borrower written notice of an Event of Default, the holders of a majority in aggregate principal amount of the Bonds then Outstanding shall have requested the Trustee in writing to institute such proceeding, the Trustee shall have been afforded a reasonable opportunity to exercise its powers or to institute such proceeding, and there shall have been offered to the Trustee indemnity and the Trustee shall have thereafter failed or refused to exercise such powers or to institute such proceeding within a reasonable time. Nothing in this Indenture shall affect or impair any right of enforcement conferred on any Holder by the Act to enforce (i) the payment of the principal of and premium (if any) and interest on Bonds at and after the maturity thereof, or (ii) the obligation of the Authority to pay the principal of and premium (if any) and interest on Bonds to such Holders at the time, place, from the source and in the manner as provided in this Indenture.

**Discontinuance of Default Proceedings.** Prior to the drawing on the Letter of Credit upon the occurrence of an Event of Default pursuant to the Indenture, in case the Trustee has proceeded to enforce any right under the Indenture by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or have been determined adversely, then and in every such case the Authority, the Bank and the Trustee shall be restored to their former positions and rights under the Indenture and all rights, remedies and powers of the Trustee and the Bank shall continue as if no such proceedings had been taken subject to the limits of any adverse determination.

**Waiver.** The Trustee, with the consent of the owners of a majority in aggregate principal amount of the Outstanding Bonds and with the consent of the Bank, may waive any default or Event of Default under the Indenture and its consequences and rescind any declaration of acceleration of maturity of principal, and shall do so upon the written request of the Bank; provided, however, that there shall be no such waiver or rescission unless the Purchase Price and all principal, premium, if any, and interest on the Bonds in arrears together with interest thereon (to the extent permitted by law) at the applicable rate of interest borne by the Bonds and all fees and expenses of the Trustee and the Authority shall have been paid or provided for. The Trustee may not waive any default or Event of Default under the Indenture in respect of which a draw has been honored under the Letter of Credit, unless the amount of such draw has been reinstated in full and the Trustee has received the written consent of the Bank to such waiver, the written acknowledgment of the Bank of such reinstatement, and in the case of an Event of Default described in (e) or (f) above, the written notice of rescission by the Bank of the prior written notice and direction of the Bank provided as described in (e) or (f) above.

**Application of Moneys.** All moneys received by the Trustee pursuant to any right given or action taken under the provisions of the Indenture shall be deposited in the Bond Fund. After payment (out of moneys derived from a source other than the Letter of Credit or remarketing proceeds) of (i) the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities, and advances incurred or made by the Trustee, including reasonable attorneys' fees, and all other current outstanding fees and expenses of the Trustee and the creation of a reasonable reserve for anticipated fees, costs and expenses, and (ii) any sums due to the Authority under the Loan Agreement (other than Loan Repayments), such moneys shall be applied in the order set forth below:

(a) to the Holders for the payment of the principal, premium, if any, and interest then due and unpaid upon the Bonds, without preference or priority as between principal, premium or interest, installments of interest or Bonds, ratably according to the amounts due respectively for principal, premium and interest to the Persons entitled thereto;

(b) to the Bank to the extent the Bank certifies to the Trustee that the Borrower is indebted to the Bank under the Reimbursement Agreement; and

(c) to the Borrower.

Notwithstanding the foregoing, the Trustee shall apply moneys received under the Letter of Credit only to principal, premium (if covered by the Letter of Credit) and interest on the Bonds (except Pledged Bonds or Borrower Bonds). Subject to the provisions of the Indenture relating to acceleration, whenever moneys are to be applied as above, the Trustee shall fix the date of declaration of acceleration (which shall be the earliest practical date, in the sole discretion of the Trustee, for which the requisite notice to the Authority and the Holders can be given) upon which such application is to be made and upon such date of acceleration, interest on the amounts of principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date

**Absolute Obligation of Authority.** Nothing described above under the caption “The Indenture – Events of Default and Remedies of Bondholders,” or in any other provision of the Indenture, or in the Bonds, contained shall affect or impair the obligation of the Authority, which is absolute and unconditional, to pay the principal of and interest on the Bonds to the respective Holders of the Bonds at their respective dates of maturity, or upon call for redemption, as provided in the Indenture, but only out of the Revenues and other assets pledged therefor in the Indenture, or affect or impair the right of such Holders, which is also absolute and unconditional, to enforce such payment by virtue of the contract embodied in the Bonds.

**Termination of Proceedings.** In case any proceedings taken by the Trustee or any one or more Holders on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or the Holders, then in every such case the Authority, the Bank, the Trustee and the Holders, subject to any determination in such proceedings, shall be restored to their former positions and rights under the Indenture, severally and respectively, and all rights, remedies, powers and duties of the Authority, the Bank, the Trustee and the Holders (except such rights, remedies or powers that have been determined adversely to the respective party) shall continue as though no such proceedings had been taken.

### **Modification or Amendment of the Indenture**

**Amendments Permitted.** The Indenture and the rights and obligations of the Authority and of the Holders of the Bonds and of the Trustee may be modified or amended from time to time and at any time by an indenture or indentures supplemental thereto, which the Authority and the Trustee may enter into upon receipt of the written consent of the Borrower and (1) prior to the Conversion Date, the Bank, and (2) on and following the Conversion Date the holders of a majority in aggregate principal amount of Bonds then Outstanding. No such modification or amendment shall (1) extend the fixed maturity of any Bond, or reduce the amount of principal thereof, or extend the time of payment, or change the method of computing the rate of interest thereon, or extend the time of payment of interest thereon, without the consent of the Holder of each Bond so affected, or (2) reduce the aforesaid proportion of Bonds the consent of the Holders of which is required to effect any such modification or amendment, or permit the creation of any lien on the Revenues and other assets pledged under the Indenture prior to or on a parity with the lien created by the Indenture, or deprive the Holders of the Bonds of the lien created by the Indenture on such Revenues and other assets (except as expressly provided in the Indenture), without the consent of the Holders of all of the Bonds then Outstanding. It shall not be necessary for the consent of the Holders to approve the particular form of any Supplemental Indenture, but it shall be sufficient if such consent shall approve the substance thereof. Promptly after the execution by the Authority and the Trustee of any Supplemental Indenture pursuant to the provisions of the Indenture described in this paragraph, the Trustee shall mail a notice, setting forth in general terms the substance of such Supplemental Indenture, to each Rating Agency then rating the Bonds and the Holders of the Bonds at the address shown on the registration books of the Trustee. Any failure to give such notice,

or any defect therein, shall not, however, in any way impair or affect the validity of any such Supplemental Indenture.

The Indenture and the rights and obligations of the Authority, of the Trustee and of the Holders of the Bonds may also be modified or amended from time to time and at any time by a Supplemental Indenture or Indentures, which the Authority and the Trustee may enter into without the necessity of obtaining the consent of any Holders but with the consent of the Borrower and, prior to the Conversion Date, the Bank, for any one or more of the following purposes:

(1) to add to the covenants and agreements of the Authority in the Indenture contained other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Bonds (or any portion thereof), or to surrender any right or power in the Indenture reserved to or conferred upon the Authority;

(2) to make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision, contained in the Indenture, or in regard to matters or questions arising under the Indenture, as the Authority or the Borrower may deem necessary or desirable and not inconsistent with the Indenture;

(3) to modify, amend or supplement the Indenture in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute;

(4) to conform to the terms and provisions of any Alternate Letter of Credit;

(5) to modify, amend or supplement the Indenture in such a manner to permit the Authority, the Trustee, the Borrower or any other responsible party to comply with the requirements of Rule 15c2-12, as it may from time to time be amended or supplemented, with respect to the Bonds;

(6) to make any modification or amendment to the Indenture, even if consent of Holders would otherwise be required, (i) if such amendment will be effective upon the remarketing of Bonds following the mandatory tender thereof, or (ii) if notice of such proposed modification or amendment is given to Holders (in the same manner as notices of redemption are given) at least fifteen (15) days before the effective date thereof and on or before such effective date the Holders have the right to demand purchase of their Bonds; or

(7) to modify, amend or supplement the Indenture in any other manner which, in the judgment of the Trustee, which may be based upon an Opinion of Counsel, will not materially adversely affect the interests of the Holders of the Bonds.

The Trustee may in its discretion, but shall not be obligated to, enter into any such Supplemental Indenture authorized by the provisions of the Indenture described above, which materially adversely affects the Trustee's own rights, duties or immunities under the Indenture or otherwise.

Any Supplemental Indenture permitted pursuant to the provisions of the Indenture described under this caption may be approved by an Authorized Representative of the Authority and need not be approved by resolution or other action of the governing body of Authority.

**Effect of Supplemental Indenture.** Upon the execution of any Supplemental Indenture pursuant to the provisions of the Indenture described herein, the Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under the Indenture of the Authority, the Borrower, the Trustee and all Holders of Bonds Outstanding shall thereafter be determined, exercised and enforced under the Indenture subject in all respects to such modification and amendment, and all the terms and conditions of

any such Supplemental Indenture shall be deemed to be part of the terms and conditions of the Indenture for any and all purposes.

### **Defeasance**

**Discharge of Indenture.** Bonds may be paid in any of the following ways, provided that the Authority also pays or causes to be paid any other sums payable under the Indenture by the Authority:

- (a) by paying or causing to be paid with Available Moneys the principal of, interest and premium, if any, on the Bonds, as and when the same become due and payable;
- (b) by depositing with the Trustee, in trust, at or before maturity, money or securities in the necessary amount (as provided pursuant to the provisions of the Indenture described below under the caption "Deposit of Money or Securities with Trustee") to pay or redeem with Available Moneys all Bonds; or
- (c) by delivering to the Trustee, for cancellation by it, the Bonds then Outstanding.

If the Authority shall also pay or cause to be paid all other sums payable under the Indenture by the Authority, then and in that case and upon payment of all amounts due and owing the Bank under the Reimbursement Agreement, at the election of the Authority (evidenced by a Certificate of the Authority, filed with the Trustee, signifying the intention of the Authority to discharge all such indebtedness and the Indenture), and notwithstanding that any Bonds shall not have been surrendered for payment, the Indenture and the pledge of Revenues and other assets made under the Indenture and all covenants, agreements and other obligations of the Authority under the Indenture shall cease, terminate, become void and be completely discharged and satisfied except only as provided pursuant to the provisions of the Indenture described below under the caption "Discharge of Liability on Bonds." In such event, upon Request of the Authority, the Trustee shall cause an accounting for such period or periods as may be requested by the Authority to be prepared and filed with the Authority and shall execute and deliver to the Authority all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Trustee shall pay over, transfer, assign or deliver all moneys or securities or other property held by it pursuant to the Indenture (other than the Rebate Fund) which are not required for the payment or redemption of Bonds not theretofore surrendered for such payment or redemption and any amounts owed to the Trustee under the Indenture in the following order (1) first, to the Bank to the extent of any amounts due to such Bank pursuant to the Reimbursement Agreement, and (2) second, to the Borrower, provided, however, that notwithstanding any provision of the Indenture or the Loan Agreement, under no circumstances may the Authority or the Borrower receive any funds derived from a draw on the Letter of Credit, remarketing proceeds, or moneys held for the payment of particular Bonds (including moneys held for non-presented Bonds).

Notwithstanding any other provision to the contrary in the Indenture and unless otherwise agreed to by the Bank, if moneys have been drawn by the Trustee under the Letter of Credit for which the Bank has not been reimbursed or the Borrower is otherwise indebted to the Bank under the Reimbursement Agreement, then: (A) the lien of this Indenture shall not be discharged and the Bank shall have the benefit of the Indenture in accordance the provisions thereof; (B) the Bank shall be subrogated to the extent of such draws on the Letter of Credit or the Borrower's indebtedness to the Bank to all rights of the Holders to enforce the payment of the Bonds from the Security and all other rights of the Holders under the Bonds, the Indenture and the Loan Agreement; (C) the Bank shall be entitled in its own right upon payment in full of the principal of and interest on the Bonds to exercise all rights of enforcement and remedies set forth in the Indenture; (D) the Holders will be deemed paid to the extent of moneys drawn by the Trustee under the Letter of Credit; and (E) the Trustee shall sign, execute and deliver all documents or instruments and do all things which may be reasonably required by the Bank to effect the Bank's subrogation of rights of enforcement and remedies set forth in the Indenture in accordance with the intent of the Indenture, including without limitation a conveyance and assignment of the Loan Agreement to the Bank.

**Discharge of Liability on Bonds.** Upon the deposit with the Trustee, in trust, at or before maturity, of money or securities in the necessary amount (as provided pursuant to the provisions of the Indenture described below under the caption "Deposit of Money or Securities with Trustee") to pay or redeem any Outstanding Bond (whether upon or prior to its maturity or the redemption date of such Bond), provided that, if such Bond is to be

redeemed prior to maturity, notice of such redemption shall have been given as provided in the Indenture or provision satisfactory to the Trustee shall have been made for the giving of such notice, then all liability of the Authority in respect of such Bond shall cease, terminate and be completely discharged, except only that the Holder thereof shall thereafter be entitled to payment of the principal of, premium, if any, and interest on such Bond by the Authority, and the Authority shall remain liable for such payment, but only out of such money or securities deposited with the Trustee as aforesaid for their payment and such money or securities shall be pledged to such payment; provided further, however, that the provisions of the Indenture described below under the caption "Payment of Bonds After Discharge of Indenture Obligation" shall apply in all events.

**Deposit of Money or Securities with Trustee.** Whenever in the Indenture it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities in the necessary amount to pay or redeem any Bonds, the money or securities to be deposited or held may include money or securities held by the Trustee in the funds and accounts established pursuant to the Indenture (exclusive of the Rebate Fund, the Letter of Credit Account and any account established to hold funds for the purchase of Bonds) and shall be:

(a) Available Moneys in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity, except that, in the case of Bonds which are to be redeemed prior to maturity and in respect of which notice of such redemption shall have been given as provided in the Indenture or provision satisfactory to the Trustee shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount or redemption price of such Bonds and all unpaid interest thereon to the redemption date; or

(b) Investment Securities of the type described in clause (1) of the definition of Investment Securities which are purchased with Available Moneys, the principal of and interest on which when due and without reinvestment will provide money sufficient to pay the principal of, premium, if any, all unpaid interest to maturity, or to the redemption date, on the Bonds to be paid or redeemed, as such principal and interest become due, provided that, in the case of Bonds which are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in the Indenture provided or provision satisfactory to the Trustee shall have been made for the giving of such notice;

provided, in each case, that the Trustee shall have been irrevocably instructed (by the terms of the Indenture or by Request of the Authority) to apply such money or Investment Securities to the payment of such principal, premium, if any, and interest with respect to such Bonds and provided further that the Trustee shall have received a report of an Accountant that the moneys or Investment Securities on deposit are sufficient to pay the principal, premium, if any, and interest on the Bonds to maturity or the redemption date and if such Bonds are then bearing interest at other than an auction rate or a fixed rate, a legal opinion from a nationally recognized firm in bankruptcy law that payment of the Bonds from such moneys would not constitute transfers avoidable under 11 U.S.C. Section 547(b) should the Borrower or the Authority become the debtor in a case under the Bankruptcy Code.

**Payment of Bonds After Discharge of Indenture Obligation.** Notwithstanding any provisions of the Indenture to the contrary, and subject to applicable laws of the State, any moneys deposited with the Trustee, in trust for the payment of the principal of, or interest or premium on, any Bond remaining unclaimed for two (2) years after such payment has become due and payable (whether on an Interest Payment Date, at maturity, upon call for redemption, upon tender for purchase or by declaration as provided in the Indenture), then such moneys shall be repaid to the Borrower upon its written request, and the Holder of such Bond shall thereafter be entitled to look only to the Borrower for payment thereof, and all liability of the Authority and the Trustee with respect to such moneys shall thereupon cease; provided, that before the disposition of such moneys as aforesaid, the Trustee may (at the cost of the Borrower) first publish a notice at least once in a Qualified Newspaper, such notice to be in such form as may be deemed appropriate by the Trustee, in respect of the Bonds so payable and not presented and in respect of the provisions relating to the disposition of the moneys held for the payment thereof.

## **THE LOAN AGREEMENT**

The Loan Agreement provides the terms of the loan of the proceeds of the Bonds to the Borrower and the repayment and security for such loan provided by the Borrower. The summary of the provisions of the Loan Agreement set forth below does not purport to be complete or definitive, is supplemental to the summary of other

provisions of the Loan Agreement set forth elsewhere in this Official Statement, and is qualified in its entirety by reference to the full terms of the Loan Agreement.

### **Loan of Bond Proceeds**

**Loan Repayments.** Pursuant to the Indenture, the Authority has authorized the issuance of the Bonds. Pursuant to the Loan Agreement, the Authority will loan and advance to the Borrower, and the Borrower will borrow and accept from the Authority (solely from the proceeds of the sale of the Bonds), the proceeds of the Bonds, such proceeds to be applied under the terms and conditions of the Loan Agreement and the Indenture.

In consideration of the loan to the Borrower of such proceeds, the Borrower agrees that, on or before each date on which a payment of principal, premium, if any, or interest is due on the Bonds, whether by acceleration, mandatory redemption or otherwise, and until the principal of, premium, if any, and interest on the Bonds has been fully paid or provided for as set forth in the Indenture, the Borrower shall pay, or cause to be paid, to the Trustee, in immediately available funds for deposit in the Bond Fund, the Loan Repayments, including the amounts payable as principal, premium, if any, and interest due on the Bonds on such date. Each payment by the Borrower to the Trustee under the Loan Agreement shall be in lawful money of the United States of America and paid to the Trustee at its Principal Corporate Trust Office and held, invested, disbursed and applied as provided in the Indenture.

The Borrower shall provide for the payment of the principal of and interest on the Bonds during the Variable Rate Period by the delivery of a Letter of Credit meeting the requirements of the Indenture. The Letter of Credit may be replaced with an Alternate Letter of Credit pursuant to the requirements of the Indenture. The Borrower authorizes and directs the Trustee to draw moneys under the Letter of Credit in accordance with the provisions of the Indenture and the terms of the Letter of Credit to the extent necessary to make any payments of principal of, premium, if any and interest on the Bonds as and when the same become due and payable.

Unless otherwise required by the Reimbursement Agreement, if the Bonds are supported by a Letter of Credit and drawings are made thereunder for the purpose of making payments with respect to the principal, premium, if any, and interest due on the Bonds which are required to be made pursuant to the Loan Agreement, no additional payments shall be due or paid by the Borrower to the Trustee under the Loan Agreement with respect to the payment of principal of, premium, if any, or interest on such Bonds to the extent that funds are so drawn on the Letter of Credit and applied by the Trustee for such payment on such dates and the Bank is reimbursed for such drawing. If the Borrower has deposited moneys into the Revenue Account of the Bond Fund with respect to such payments, such moneys shall be applied to reimburse the Bank for amounts drawn under the Letter of Credit applied to such payments.

Except as otherwise expressly provided in the Loan Agreement, all amounts payable thereunder by the Borrower to the Authority shall be paid to the Trustee as assignee of the Authority and this Loan Agreement and all right, title and interest of the Authority in any such payments are thereby assigned and pledged to the Trustee so long as any Bonds remain Outstanding.

**Additional Payments.** In addition to the Loan Repayments, the Borrower shall also pay to the Authority, to the Trustee or to the other applicable party, as the case may be, "Additional Payments," as follows:

(a) All taxes and assessments of any type or character charged to the Authority or to the Trustee affecting the amount available to the Authority or the Trustee from payments to be received under the Loan Agreement or in any way arising due to the transactions contemplated by the Loan Agreement (including taxes and assessments assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Trustee and taxes based upon or measured by the net income of the Trustee; provided, however, that the Borrower shall have the right to protest any such taxes or assessments and to require the Authority or the Trustee, at the Borrower's expense, to protest and contest any such taxes or assessments levied upon them and that the Borrower shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Authority or the Trustee;

(b) All reasonable fees, charges and expenses of the Trustee, the Remarketing Agent or the Tender Agent for services rendered under the Indenture or otherwise in connection with the Bonds, as and when the same become due and payable;

(c) The fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the Authority or the Trustee to prepare audits, financial statements, reports, opinions or provide such other services required under the Loan Agreement, the Bonds or the Indenture;

(d) The annual fee of the Authority and the fees and expenses of the Authority or any agent selected by the Authority to act on its behalf in connection with the Loan Agreement, the other Borrower Documents, the Bonds or the Indenture, including, without limitation, any and all expenses incurred in connection with the authorization, issuance, sale and delivery of any such Bonds or in connection with any litigation which may at any time be instituted involving the Loan Agreement, the other Borrower Documents, the Bonds or the Indenture or any of the other documents contemplated by the Loan Agreement or by any of the foregoing documents, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of the Loan Agreement, the other Borrower Documents, the Bonds or the Indenture;

(e) All other fees and expenses of the Authority attributable to the Loan Agreement, the Bonds or the Indenture; and

(f) All amounts required to be paid pursuant to the provisions of the Loan Agreement relating to expenses and indemnification.

**Purchase Price of Bonds.** The Borrower agrees to pay, or cause to be paid, to the Trustee on or before each purchase date, an amount sufficient, together with any remarketing proceeds then held by the Remarketing Agent or the Tender Agent, as appropriate, and available for such purpose under the Indenture, to enable the Trustee to pay the Purchase Price of all Bonds to be purchased on such date at the price specified therein; provided, however, that if the Letter of Credit is outstanding and drawings may be made thereunder for such purpose, payments with respect to the Purchase Price of the Bonds on such date which are required to be made by the Borrower under the Loan Agreement shall be made with funds drawn by the Trustee under the Letter of Credit. No additional payments shall be due or paid by the Borrower under the Loan Agreement with respect to the Purchase Price of such Bonds to the extent that funds are so drawn under the Letter of Credit and applied by the Trustee, the Tender Agent or the Remarketing Agent to payment of the Purchase Price of Bonds purchased on such date, unless and to the extent the Bank is not reimbursed for such draws when due under the Reimbursement Agreement. Anything in the Loan Agreement to the contrary notwithstanding, if on any purchase date the remarketing proceeds together with the amount theretofore drawn under the Letter of Credit are, for any reason, insufficient to pay the Purchase Price of the Bonds being tendered on such date as provided in the Indenture, the Borrower, pursuant to the Loan Agreement, agrees to immediately pay an amount equal to such deficiency to the Trustee at its Corporate Trust Office in immediately available funds. Such payment shall be made at such times as are necessary so that sufficient funds will be available at such times as are necessary to pay the Purchase Price of the Bonds tendered under the Indenture at the times and in the manner contemplated by the Indenture.

**Obligations of the Borrower Unconditional; Net Contract.** The obligations of the Borrower to make the Loan Repayments, Additional Payments and other payments required under the Loan Agreement and to perform and observe the other agreements on its part contained in the Loan Agreement shall be absolute and unconditional, and shall not be abated, rebated, setoff, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, while any Bonds remain Outstanding or any Additional Payments or other payments remain unpaid, regardless of any contingency, event or cause whatsoever, including, without limiting the generality of the foregoing, any natural disaster, acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Facilities, commercial frustration of purpose, any changes in the laws of the United States of America or of the State of California or any political subdivision of either or in the rules or regulations of any governmental authority, or any failure of the Authority or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Loan Agreement or the Indenture. The Loan Agreement shall be deemed and construed to be a “net contract,” and the Borrower shall pay absolutely

net the Loan Repayments, Additional Payments and all other payments required under the Loan Agreement, regardless of any rights of setoff, recoupment, abatement or counterclaim that the Borrower might otherwise have against the Authority or the Trustee or any other party or parties.

**Prepayment.** The Borrower shall have the right at any time or from time to time to prepay all or any part of the Loan Repayments and the Authority agrees that the Trustee shall accept such prepayments when the same are tendered by the Borrower, and the Trustee shall call for redemption Bonds as directed by the Borrower. The Borrower shall be required to prepay Loan Repayments in the amounts and at the times that Bonds are subject to mandatory redemption pursuant to the Indenture. All such prepayments (and the additional payment of any amount necessary to pay the applicable premiums, if any, payable upon the redemption of Bonds) shall be deposited upon receipt in the Bond Fund and used for the redemption or purchase or defeasance of Outstanding Bonds in the manner and subject to the terms and conditions set forth in the Indenture.

### **Particular Covenants of the Borrower**

**Maintenance of Existence.** (a) To the extent permitted by law and its articles of incorporation and bylaws, the Borrower covenants and agrees that during the term of the Loan Agreement it will maintain its existence as a California nonprofit public benefit corporation and an organization described in Section 501(c)(3) of the Code, will continue to maintain its status as a corporation in good standing in the State of California, will not dissolve, sell or otherwise dispose of all or substantially all of its assets and will not combine or consolidate with or merge into another entity so that the Borrower is not the resulting or surviving entity (any such sale, disposition, combination or merger shall be referred to hereafter as a “transaction”); provided, however, that the Borrower may enter into any such transaction at any time if it has obtained the prior written consent of the Authority and Favorable Opinion of Bond Counsel. The consent of the Authority (which shall not be unreasonably withheld) shall be given within thirty (30) days after the Authority receives satisfactory evidence that:

(i) the surviving or resulting transferee, person or entity, as the case may be, assumes and agrees in writing to pay and perform all of the obligations of the Borrower under the Loan Agreement; and

(ii) the surviving or resulting transferee, person or entity, as the case may be, is an organization described in Section 501(c)(3) of the Code and qualifies to do business in the State of California.

(b) Within ten (10) days after the consummation of the transaction, the Borrower shall provide the Authority and the Trustee with counterpart copies of the merger instruments, or other documents constituting the transaction, including: (A) copies of the instruments of assumption referred to in (i) above; (B) evidence of qualification as referred to in (ii) above; (C) a Certificate of the Borrower stating that the requirements of the Loan Agreement described in clause (a) above have been met. The Borrower shall give the Authority at least thirty (30) days’ written notice prior to the effective date of any transaction described above, together with drafts of the documents of assumption and the Certificate of the Borrower as required in the Loan Agreement. The Borrower agrees to provide such other information as the Authority may reasonably request in order to assure compliance with the requirements of the Loan Agreement described herein.

(c) If a merger, consolidation, sale or other transfer is effected, as provided in the Loan Agreement, all provisions of the Loan Agreement described above relating to such transaction shall continue in full force and effect and no further merger, consolidation, sale or transfer shall be effected except in accordance such provisions of the Loan Agreement.

**Continuing Disclosure.** The Borrower covenants and agrees to comply with the continuing disclosure requirements promulgated under Rule 15c2-12, as it may from time to time hereafter be amended or supplemented, if and to the extent that such requirements are applicable to any of the Bonds. Notwithstanding any other provision of the Loan Agreement, failure of the Borrower to comply with the requirements of Rule 15c2-12, as it may from time to time hereafter be amended or supplemented, shall not be considered a Loan Default Event; however, the Trustee, at the written request of the Remarketing Agent, the Tender Agent or the Holders of at least 25% aggregate principal amount of Outstanding Bonds, shall, but only to the extent indemnified to its satisfaction from and against any cost, liability or expense related thereto, including, without limitation, reasonable fees and expenses of its

attorneys and advisors and additional fees and expenses of the Trustee or any Holder or beneficial owner of the Bonds, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Borrower to comply with its obligations pursuant to the Loan Agreement described herein.

**Tax Covenant.** The Borrower covenants and agrees that it shall at all times do and perform all acts and things permitted by law and the Loan Agreement and the Indenture which are necessary in order to assure that interest paid on the Bonds (or any of them) will be excluded from gross income for federal income tax purposes and shall take no action that would result in such interest not being excluded from gross income for federal income tax purposes. Without limiting the generality of the foregoing, the Borrower agrees to comply with the provisions of each Tax Certificate.

**Agreement to Supply Letter of Credit.** The Borrower shall provide for the delivery of a Letter of Credit meeting the requirements of the Indenture to the Trustee simultaneously with the original issuance of the Bonds.

**Purchase of Bonds Prohibited.** So long as a Letter of Credit is in effect, the Borrower will not, and will not permit any "Insider" of the Borrower (as defined in the Bankruptcy Code) to purchase, directly or indirectly, any Bonds, except with funds drawn under the Letter of Credit as required by the Loan Agreement.

**Security Interest in the Project Fund.** To better secure its obligations under the Loan Agreement, including the obligation to pay Loan Repayments, as and when they are due, the Borrower grants a security interest in the moneys at any time held in the Project Fund, and any proceeds thereof, to the Trustee for the benefit of the Holders and the Bank to be perfected by possession of such moneys in the Project Fund by the Trustee and held therein for the benefit of the Holders and Bank as provided in the Indenture.

**Special Services Covenant.** The Borrower shall provide services substantially of the kind provided on the date of issuance of the Bonds within the territorial limits of the County of Santa Clara or one or more other Members or Associate Members of the Authority, as long as any Bonds remain Outstanding; provided, however, that the Authority may, upon review of such facts as it deems relevant, from time to time allow the Borrower to provide alternative services which serve the public interest and provide public benefit, or deem this special services covenant to be satisfied in whole or in part.

## **Loan Default Events and Remedies**

**Loan Default Events.** Each of the following events shall constitute a Loan Default Event under the Loan Agreement:

- (a) Failure by the Borrower to make the Loan Repayments in the amounts and at the times provided in the Loan Agreement;
- (b) Failure by the Borrower to make payments in the amounts and at the times provided in the provisions of the Loan Agreement relating to payment of the Purchase Price of the Bonds;
- (c) Failure by the Borrower to observe and perform any other covenant, condition or agreement on its part to be observed or performed under the Loan Agreement for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, shall have been given to the Borrower by the Authority, the Bank or the Trustee; provided, however, that if the failure is such that it can be corrected but not within such 30-day period, and corrective action is instituted by the Borrower within such period and diligently pursued until such failure is corrected, then such period shall be increased to such extent as shall be determined by the Trustee with the consent of the Bank to be necessary to enable the Borrower to observe or perform such covenant, condition, undertaking or agreement through the exercise of due diligence;
- (d) Any representation or warranty made by the Borrower in any document delivered by the Borrower to the Trustee or the Bank or the Authority in connection with the sale and delivery of the Bonds proves to be untrue when made in any material respect;

(e) Occurrence of an Event of Default under the Indenture; or

(f) The Borrower (i) shall admit in writing its inability to pay its debts generally, (ii) shall make a general assignment for the benefit of creditors, (iii) shall institute any proceeding or voluntary case (A) seeking to adjudicate it a bankrupt or insolvent or (B) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief or protection of debtors or (C) seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property, (iv) shall take any action to authorize any of the actions described above in this subsection (f), or (v) shall have instituted against it any proceeding (A) seeking to adjudicate it a bankrupt or insolvent or (B) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief or protection of debtors or (C) seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property, and, if such proceeding is being contested by the Borrower in good faith, such proceeding shall remain undismissed or unstayed for a period of 60 days.

**Remedies on Default.** If a Loan Default Event shall occur, then, and in each and every such case during the continuance of such Loan Default Event, the Authority or the Trustee, to the extent the Trustee has actual knowledge or notice of such Loan Default Event, may take any one or more of the following remedial steps:

(a) The Authority or the Trustee may, upon notice in writing to the Borrower and the Bank, declare all installments of Loan Repayments and Additional Payments payable for the remainder of the term of the Loan Agreement to be immediately due and payable, whereupon the same shall be immediately due and payable, anything in the Loan Agreement to the contrary notwithstanding; “all installments” as used in this paragraph shall mean an amount equal to the entire principal amount of the then Outstanding Bonds, together with all interest accrued or to accrue on and prior to the next succeeding redemption date or dates on which the Bonds can be redeemed after giving notice to the Holders thereof as required by the Indenture.

(b) The Authority or the Trustee may take whatever action, at law or in equity, as may appear necessary or desirable to collect the Loan Repayments, Additional Payments and any other payments then due and thereafter to become due under the Loan Agreement or to enforce the performance and observance of any obligation, covenant, agreement or provision contained in the Loan Agreement to be observed or performed by the Borrower.

(c) The Trustee shall immediately draw upon the Letter of Credit, if permitted by its terms and required by the terms of the Indenture, and apply the amount so drawn in accordance with the Indenture and may exercise any remedy available to it under the Indenture.

**Remedies Not Exclusive; No Waiver of Rights.** No remedy in the Loan Agreement conferred upon or reserved to the Authority or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy, to the extent permitted by law, shall be cumulative and shall be in addition to every other remedy given under the Loan Agreement or now or hereafter existing at law or in equity or otherwise. In order to entitle the Authority or the Trustee to exercise any remedy, to the extent permitted by law, reserved to it contained in the Loan Agreement, it shall not be necessary to give any notice, other than such notice as may be in the Loan Agreement expressly required. Such rights and remedies as are given to the Authority under the Loan Agreement shall also extend to the Trustee, and the Trustee may exercise any rights of the Authority under the Loan Agreement, and the Trustee and the Holders of the Bonds shall be deemed third-party beneficiaries of all covenants and conditions in the Loan Agreement contained.

No delay in exercising or omitting to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

**Expenses on Default.** In the event the Borrower should default under any of the provisions of the Loan Agreement and the Authority or the Trustee should employ attorneys or incur other expenses for the collection of the payments due under the Loan Agreement, the Borrower agrees that it will on demand therefor pay to the

Authority or the Trustee the fees of such attorneys and such other reasonable expenses so incurred by the Authority or the Trustee.

**Notice of Default.** The Borrower agrees that, as soon as is practicable, and in any event within ten (10) days of a Loan Default Event, the Borrower will furnish the Trustee notice of any event which is a Loan Default Event which has occurred and is continuing on the date of such notice, which notice shall set forth the nature of such event and the action which the Borrower proposes to take with respect thereto.

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## APPENDIX B

### BOOK-ENTRY SYSTEM

***The information herein concerning DTC and DTC's book-entry system has been obtained from sources that the Authority, the Borrower, the Trustee and the Underwriter believe to be reliable, but the Authority, the Borrower, the Trustee and the Underwriter take no responsibility for the accuracy thereof. Beneficial Owners should confirm the following information with DTC or the DTC Participants (as defined herein).***

The Depository Trust Company ("DTC") will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond certificate will be issued for the Bonds, in the aggregate principal amount of such issue, and will be deposited with DTC.

DTC, the world's largest depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 2.2 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments from over 100 countries that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC, in turn, is owned by a number of Direct Participants of DTC and Members of the National Securities Clearing Corporation, Fixed Income Clearing Corporation and Emerging Markets Clearing Corporation, (NSCC, FICC, and EMCC, also subsidiaries of DTCC), as well as by the New York Stock Exchange, Inc., the American Stock Exchange LLC, and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has Standard & Poor's highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices shall be sent to DTC. If less than all of the Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Borrower as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and dividend payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Borrower or the Trustee, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of the Authority, DTC, the Trustee, or the Borrower, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Borrower or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

A Beneficial Owner shall give notice to elect to have its Bonds purchased or tendered, through its Participant, to the Tender Agent, and shall effect delivery of such Bonds by causing the Direct Participant to transfer the Participant's interest in the Bonds, on DTC's records, to the Tender Agent. The requirement for physical delivery of Bonds in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the Bonds are transferred by Direct Participants on DTC's records and followed by a book-entry credit of tendered Bonds to the Tender Agent's DTC account.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the Borrower or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, Bond certificates are required to be printed and delivered.

The Borrower may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, Bond certificates will be printed and delivered.

***The foregoing description of the procedures and record-keeping with respect to beneficial ownership interests in the Bonds, payment of the principal, purchase price, interest and other payments on the Bonds to DTC Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interests in such Bonds and other related transactions by and between DTC, the DTC Participants and the Beneficial Owners is based solely on information provided by DTC. Accordingly, no representations can be made concerning these matters and neither the DTC Participants nor the Beneficial Owners should rely on the foregoing information with respect to such matters, but should instead confirm the same with DTC or the DTC Participants, as the case may be.***

***The Borrower and the Authority cannot and do not give any assurances that DTC will distribute to DTC Participants, or that DTC Participants or others will distribute to the Beneficial Owners, payments of principal, interest and premium, if any, with respect to the Bonds paid or any redemption or other notices or that they will do so on a timely basis or will serve and act in the manner described in this Official Statement. Neither the Borrower nor the Authority is responsible or liable for the failure of DTC or any DTC Participant or Indirect***

*Participant to make any payments or give any notice to a Beneficial Owner with respect to the Bonds or any error or delay relating thereto.*

*So long as Cede & Co. is the registered owner of the Bonds, as nominee of DTC, references herein to the Owners or registered Bondholders of the Bonds, shall mean Cede & Co., as aforesaid, and shall not mean the Beneficial Owners of the Bonds.*

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## APPENDIX C

### PROPOSED FORM OF OPINION OF BOND COUNSEL

[Closing Date]

ABAG Finance Authority  
for Nonprofit Corporations  
Oakland, California

ABAG Finance Authority for Nonprofit Corporations  
Revenue Bonds (Our Lady of Fatima Villa), Series 2006  
(Final Opinion)

Ladies and Gentlemen:

We have acted as bond counsel to the ABAG Finance Authority for Nonprofit Corporations (the "Authority") in connection with the issuance of \$12,305,000 aggregate principal amount of ABAG Finance Authority for Nonprofit Corporations Revenue Bonds (Our Lady of Fatima Villa), Series 2006 (the "Bonds"), issued pursuant to the provisions of the Joint Exercise of Powers Act (Chapter 5 of Division 7 of Title 1 of the California Government Code, commencing with Section 6500 thereof) and an Indenture, dated as of May 1, 2006 (the "Indenture"), between the Authority and Wells Fargo Bank, National Association, as trustee (the "Trustee"). The Indenture provides that the Bonds are issued for the purpose of making a loan of the proceeds thereof to Our Lady of Fatima Villa, Inc. (the "Borrower") pursuant to a Loan Agreement, dated as of May 1, 2006 (the "Loan Agreement"), between the Authority and the Borrower. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Indenture.

In such connection, we have reviewed the Indenture, the Loan Agreement, the Tax Certificate and Agreement, dated the date hereof (the "Tax Certificate"), between the Authority and the Borrower, opinions of counsel to the Authority, the Trustee and the Borrower, certificates of the Authority, the Trustee, the Borrower and others, and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein.

We have relied on the opinion of Diepenbrock Harrison, A Professional Corporation, counsel to the Borrower, regarding, among other matters, the current qualification of the Borrower as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code") and the use of the facilities financed with the proceeds of the Bonds in activities that are not considered unrelated trade or business activities of the Borrower within the meaning of Section 513 of the Code. We note that such opinion is subject to a number of qualifications and limitations. Failure of the Borrower to be organized and operated in accordance with the Internal Revenue Service's requirements for the maintenance of its status as an organization described in Section 501(c)(3) of the Code, or use of the bond-financed facilities in activities that are considered unrelated trade or business activities of the Borrower within the meaning of Section 513 of the Code, may result in interest on the Bonds being included in gross income for federal income tax purposes possibly from the date of issuance of the Bonds.

The interest rate mode and certain agreements, requirements and procedures contained or referred to in the Indenture, the Loan Agreement, the Tax Certificate and other relevant documents may be changed and certain actions (including, without limitation, defeasance of Bonds) may be taken or omitted under the circumstances and subject to the terms and conditions set forth in such documents. No opinion is expressed herein as to any Bond or the interest thereon if any such change occurs or action is taken or omitted upon the advice or approval of counsel other than ourselves.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to

our attention after the date hereof. Our engagement with respect to the Bonds has concluded with their issuance, and we disclaim any obligation to update this letter. We have assumed the genuineness of all documents and signatures presented to us (whether as originals or as copies) and the due and legal execution and delivery thereof by, and validity against, any parties other than the Authority. We have assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or certified in the documents, and of the legal conclusions contained in the opinions, referred to in the second and third paragraphs hereof. Furthermore, we have assumed compliance with all covenants and agreements contained in the Indenture, the Loan Agreement and the Tax Certificate, including (without limitation) covenants and agreements compliance with which is necessary to assure that future actions, omissions or events will not cause interest on the Bonds to be included in gross income for federal income tax purposes. We call attention to the fact that the rights and obligations under the Bonds, the Indenture, the Loan Agreement and the Tax Certificate and their enforceability may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles and to the exercise of judicial discretion in appropriate cases. We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum, choice of venue, waiver or severability provisions contained in the foregoing documents, nor do we express any opinion with respect to the state or quality of title to or interest in any of the real or personal property described in or as subject to the lien of the Indenture or the Loan Agreement or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on, any such property. Finally, we undertake no responsibility for the accuracy, completeness or fairness of the Official Statement or other offering material relating to the Bonds and express no opinion with respect thereto.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

1. The Bonds constitute the valid and binding limited obligations of the Authority.
2. The Indenture has been duly executed and delivered by, and constitutes the valid and binding obligation of, the Authority. The Indenture creates a valid pledge, to secure the payment of the principal of and interest on the Bonds, of the Revenues and any other amounts (including proceeds of the sale of the Bonds) held by the Trustee in any fund or account established pursuant to the Indenture, except the Rebate Fund and funds held to pay the Purchase Price of any Bonds, subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture.
3. The Loan Agreement has been duly executed and delivered by, and constitutes a valid and binding agreement of, the Authority.
4. The Bonds are not a charge or lien on the funds or property of the Authority except to the extent of the aforementioned pledge. Neither the faith and credit nor the taxing power of the State of California or of any political subdivision thereof is pledged to the payment of the principal of or interest on the Bonds. The Bonds do not constitute a debt of the State of California, and said State is not liable for payment thereof.
5. Interest on the Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Code and is exempt from State of California personal income taxes. Interest on the Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although we observe that it is included in adjusted current earnings when calculating corporate alternative minimum taxable income. We express no opinion regarding other tax consequences related to the ownership or disposition of, or the accrual or receipt of interest on, the Bonds.

Faithfully yours,

ORRICK, HERRINGTON & SUTCLIFFE LLP

per





OUR LADY OF  
*Fatima  
Villa*

Assisted Living  
Skilled Nursing  
IN THE DOMINICAN TRADITION



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